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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 458. 1874

WALTER S. JOHNSTON, RECEIVER OF THE NATIONAL BANK OF THE STATE OF MISSOURI, APPELLANT,

vs.

SYLVESTER H. LAFLIN AND JAMES H. BRITTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED SEPTEMBER 3, 1878.

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1 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Be it remembered that heretofore, to wit, on the 27th day of August, 1877, in the circuit court of the United States in and for the eastern district of Missouri, in a certain cause in equity filed in said court, the following proceedings were had, to wit:

WALTER S. JOHNSTON, RECEIVER OF THE NATIONAL BANK OF THE STATE OF MISSOURI, complainant,
vs.
S. H. LAFLIN ET AL., DEFENDANTS.

This day comes the complainant by his solicitors, Messrs. Henderson and Shields, and files his bill of complaint against said defendants, and on motion of said solicitors, it is ordered that subpœnas in chancery issue against said defendants returnable to rules, the first Monday, the 1st day of October next.

And the said bill of complaint so filed as aforesaid is in words and figures following, to wit:

Bill in equity.

In the United States circuit court for the eastern district of Missouri, September term, 1877.

WALTER S. JOHNSTON, AS RECEIVER OF THE NATIONAL BANK OF THE STATE OF MISSOURI, plaintiff,
vs.
SYLVESTER H. LAFLIN AND JAMES H. BRITTON, defendants.

To the hon. judges of the circuit court of the eastern district of Missouri:

Walter S. Johnston, as receiver of the National Bank of the State of Missouri, located in said eastern district of Missouri, brings this his bill against Sylvester H. Laflin and James H. Britton, and thereupon your orator complains and says that the National Bank of the State of Missouri is a banking association organized on the 9th day of Octo-
2 ber, 1866, under the provisions of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and provide for the circulation and redemption thereof," approved June 3rd, 1864, and was authorized to and did commence business as such, in the city of St. Louis, State of Missouri, and eastern district of Missouri, on the 3rd day of October, 1866, and continued such business until the 20th day of June, 1877, when it closed its doors and suspended payment.

Your orator further shows that on the 16th day of May, 1877, the defendant, James H. Britton, was president of said banking association and was acting as such president; that the said defendant, Laflin, on the 16th day of May, 1877, was the owner of eighty-five shares of the capital stock of such association, which said stock appeared in the name of said defendant, Laflin, as the owner thereof on the books of said association; that the nominal value of each of said shares was one hundred

dollars; that on said last named day the said defendant, Laflin, then and there being a stockholder of said bank as aforesaid, and the defendant, James H. Britton, being then and there the president of said bank, entered into an arrangement and agreement whereby said defendant, Laflin, agreed to sell and transfer his said eighty-five shares of stock therein to said James H. Britton as trustee of said banking association, and in pursuance thereof delivered to said Britton, as trustee aforesaid, his certificate of said stock duly assigned to said Britton as trustee aforesaid, and transferred said stock to said Britton as trustee on the books of the said association; that said James H. Britton in said transaction and agreement, without authority of law, assumed to act as the agent and trustee of said banking association in the purchase of the said stock of said defendant, Laflin, for said bank, and paid to said defendant, Laflin, out of the funds of said banking association, the sum of five thousand thirty-seven and $\frac{50}{100}$ dollars therefor, which said sum defendant received

3 from said Britton for the sole consideration of the transfer of said stock by him to said Britton as trustee aforesaid, and for no other consideration whatever; that at the time of said pretended purchase and transfer of said stock to said Britton as trustee of said banking association as aforesaid, the said banking association was largely indebted to its depositors and other creditors, and greatly in excess of its available assets and was wholly insolvent; that said indebtedness of said banking association then existing still exists, and said bank is still wholly insolvent and unable to pay its depositors and other creditors.

Your orator further shows to this honorable court, that said arrangement and agreement between defendant, Laflin, a stockholder in said bank, and James H. Britton, president of said bank, illegally assuming to act as the trustee and agent of said bank in said purchase, was wholly unauthorized by law and void, and in contravention of the provisions of the "national bank act" of the United States, and that said pretended purchase of said stock and payment therefor out of the funds of said banking association as aforesaid, was an illegal appropriation by said Britton, president of said association as aforesaid, of the funds held in trust by said banking association for the payment of its creditors, and was a misapplication of a part thereof to the use and benefit of said defendant, Laflin, then a stockholder in said association, and a withdrawal of so much of the capital for his use and benefit, and therefore inequitable and void as against the creditors and other stockholders; that said stock now stands on the books of said association in the name of James H. Britton, trustee as aforesaid, all of which actings and doings and pretences are contrary to equity and good conscience, and tend to manifest wrong and injury of the creditors and other stockholders of said association in the premises.

Your orator further shows to this hon. court that afterwards,

4 to wit, on the 23rd day of June, 1877, the Comptroller of the Currency of the United States, by virtue of the authority conferred on him by the laws of the United States, appointed this complainant receiver of said banking association, and that as such receiver, under the direction of the Comptroller, he has taken possession of the books, records, and assets of every description of said association, and is now engaged in collecting the debts, dues, and claims belonging to it, and discharging the other duties devolved upon him by law; that immediately upon discovering the facts as above set forth, your orator repudiated said illegal transaction, and demanded the said sum of money from said defendant, Laflin, which he refuses to refund.

Wherefore your orator prays the court, that said pretended sale and

transfer of stock to said Britton, trustee of said banking association, by defendant, Laflin, be declared by this hon. court null and void, and that said defendant, Laflin, be declared still a stockholder in said banking association to the extent of eighty-five shares of stock, as aforesaid, and that the said sum of money received by said defendant, Laflin, out of the trust fund of said bank be charged in his hands with the said trust, and said defendant, Laflin, ordered and adjudged to refund said sum with interest from the time he received the same, at six per cent. per annum, to your orator for the use and benefit of the creditors of the said banking association, and that said James H. Britton be ordered and decreed to retransfer said stock so attempted to be purchased by him, as trustee aforesaid, to said defendant Laflin, on the books of said association, and that your orator may have such other general relief in the premises as the circumstances of this case require, and to this hon. court seem meet.

And may it please your honors to grant to your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said defendants, on a day certain, therein to be named, and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular of the premises, but without oath, and stand to, perform and abide such further orders and directions and decrees as may be made against them, and your orator as in duty bound will ever pray.

HENDERSON & SHIELDS,
Solicitors for Pl'ff

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Walter S. Johnston, being duly sworn, deposeth and says, that he is the plaintiff in the bill below named, and has read the same and knows the contents thereof, and that said bill is true of his own knowledge, except as to those matters which are there stated to be on information and belief, and as to those he believes them to be true.

WALTER S. JOHNSTON,
Receiver.

Subscribed and sworn to before me this twenty-seventh day of August, 1877.

[SEAL.] EDW. P. CURTIS,
Notary Public.

And thereupon, on the 5th day of September, 1877, a subpœna in chancery issued in said case, which is in words and figures following, to wit:

S'p'a in chancery.

UNITED STATES OF AMERICA,
Eastern District of Missouri, set:

In the circuit court of the United States in and for said district.

The President of the United States to Sylvester H. Laflin and James H. Britton, greeting:

You are hereby commanded to be and appear at rules to be held at

the office of the clerk of the circuit court of the United States, in and for the eastern district of Missouri, on the first Monday of October next, at the city of St. Louis, then and there to answer the bill of complaint of Walter S. Johnston, as receiver of the National
6 Bank of the State of Missouri, filed against you on the 27th day of August, 1877. Hereof fail not.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 5th day of September, 1877. Issued at office in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.]

M. M. PRICE,
Clerk,
By A. P. SELBY,
Deputy.

MEM.—The defendants to enter their appearance in this suit in the clerk's office, on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

M. M. PRICE,
Clerk,
By A. P. SELBY,
Deputy.

Upon which writ is endorsed the following return, to wit:

Return.

UNITED STATES OF AMERICA,
Eastern District of Missouri, set:

I have executed the within writ by delivering a copy of the same together with a copy of the bill of complaint thereto attached to the within named Sylvester H. Laflin, and by delivering a copy of the within writ to the within named James H. Britton, at St. Louis, in said district, this seventh day of September, 1877.

H. W. LEFFINGWELL,
United States Marshal Eastern District of Missouri,
By JNO. B. PADDELFORD,
Deputy.

And afterwards to wit, on the 29th day of September, 1877, the defendant, Laflin, filed his answer to the said bill of complaint, which answer is in the words and figures following, to wit:

Answer.

In the United States circuit court for the eastern district of Missouri,
September term thereof, 1877.

WALTER S. JOHNSTON, AS RECEIVER OF THE National Bank of the State of Missouri, pl'ff,
vs.
SYLVESTER H. LAFLIN & JAMES H. BRITTON, defendants.

7 Now comes defendant, Sylvester H. Laflin, and for his separate answer denies that he did on the 16th day of May, 1877, or at

any other time, enter into an arrangement or agreement whereby said Laflin agreed to sell and transfer his eighty-five shares of stock in the National Bank of the State of Missouri to James H. Britton, as trustee of said banking association. Denies that, in pursuance thereof, he delivered to said Britton, as trustee aforesaid, his certificate of said stock, duly assigned to said Britton, as trustee aforesaid, or that he transferred said stock to said Britton, as such trustee, on the books of the said association. Denies that said James H. Britton paid to said defendant, Laflin, out of the funds of said banking association, the sum of five thousand thirty-seven and $\frac{50}{100}$ dollars therefor. Denies that this defendant received said sum from said Britton, or any other sum for the sale consideration of the transfer of said stock by him to said Britton, as trustee for said bank. And defendant Laflin having answered, prays judgment for costs.

And for his further distinct, separate and more perfect answer, defendant Laflin says, the truth is, that being the owner of eighty-five shares of the stock of the National Bank of the State of Missouri, on or about May 15th, 1877, this defendant was offered therefor by a broker the sum of four thousand nine hundred and ninety-five dollars, or fifty-nine and a half dollars per share nett, which sum was paid to this defendant by said broker, one P. F. Keleher, in said Keleher's check upon the banking house of Bartholow, Lewis & Co., which was paid, and this defendant gave to said Keleher the certificates of said stock, signing a blank power of attorney on the back thereof, as is usual and ordinary in such sales, to have the said shares of stock transferred according to the rules and requirements of said association & not otherwise, to the purchaser thereof, whoever he might be, but not for the purpose of making anywrongful, unlawful or improper disposal of
8 such power; that this defendant had no dealings with James H. Britton, or with James H. Britton as trustee of the bank; that when this defendant got his price and surrendered his certificates of stock, he did so in good faith, and got the regular, fair market price for said stock, as it stood in the market at that time, and had no notice that said shares of stock were for the bank, or for James H. Britton, as trustee thereof, or that any unauthorized use of the funds of any person or corporation was contemplated. That this defendant had the right to sell his stock, and did sell it in the regular, usual and customary method of making such sales, and without any wrong in himself, or notice of any wrong in others.

Therefore, having fully answered, defendant Laflin prays to go hence without day, and that he have judgment for his costs.

A. W. SLAYBACK,
Att'y for Def'd't Laflin.

And afterwards, to wit, on the 27th day of December, 1877, the plaintiff filed his replication to defendant Laflin's answer, which replication is in words and figures following, to wit:

Reply.

U. S. circuit court, eastern division of Missouri.

WALTER S. JOHNSTON, RECEIVER, &C., }
vs.
SYLVESTER H. LAFLIN & J. H. BRITTON. }

Now at this day comes plaintiff, & for replication to answer of de-

fendant Laflin herein says, plaintiff has no knowledge or information sufficient to form a belief as the truth of said defendant's averment "that he was offered by a broker the sum of $4,995, or $59.50 per share net for his stock in the National Bank of the State of Missouri," or of the manner in which said sum was paid defendant, if at all, by said broker, or whether or not defendant delivered the certificate for
9 said stock to said broker, to have the said shares transferred according to the rules of such association, & not otherwise, to the purchaser thereof, whoever he might be, but not for the purpose of making any wrongful or unlawful disposal of such power.

Plaintiff denies that said defendant had no dealings with James H. Britton as trustee; denies that defendant had no notice that said shares of stock were for the bank, or for James H. Britton as trustee thereof, or notice of the unauthorized use of the funds of said bank; denies that said defendant had the right to sell said stock to the said bank, or to James H. Britton as trustee thereof, & denies that said defendant had no notice of any wrong in the officers of said bank.

And plaintiff avers that all the allegations in his bill herein are true, & he hereby affirms the same, & asks for judgment as in his petition prayed.

HENDERSON & SHIELDS,
For Plaintiff.

And afterwards, to wit, on the 8th day of February, 1878, it being an adjourned day of the September term, 1877, of said court, the following further proceedings were had in said cause, to wit:

Decree.

WALTER S. JOHNSTON, RECEIVER OF THE National Bank of the State of Missouri, complainant,

SYLVESTER H. LAFLIN AND JAMES H. Britton, defendants.

This day this cause coming on to be heard, upon the pleadings, proofs and arguments of counsel, on consideration thereof, it is ordered, adjudged and decreed that the bill of said complainant be, and the same is hereby, dismissed as to said defendant Laflin, and that said bill be dismissed as to defendant Britton, without prejudice.

It is further ordered that the complainant pay the costs herein to be taxed.

10 And thereupon the complainant, by his solicitors, moves the court to grant him an appeal from the decree herein to the Supreme Court of the United States, which appeal is allowed upon filing an appeal bond in the sum of five hundred dollars, to be approved by the court, or one of the judges thereof.

It is further ordered, that upon the filing and approval of said bond, that the clerk of this court make out and certify a full and complete transcript of the record and proceedings in this cause to the Supreme Court of the United States.

And afterwards, on the 1st day of March, 1878, the following further proceedings were had in said case, to wit:

WALTER S. JOHNSTON, RECEIVER, &C., complainant,
vs.
SYLVESTER H. LAFLIN ET AL., DEfendants.

This day comes the complainant, by his solicitors, and presents to the honorable John F. Dillon, circuit judge, his bond for an appeal, which is approved, and ordered to be filed as part of the record herein, which said bond is in words and figures following, to wit:

Bond.

Know all men by these presents, that we, Walter S. Johnston, receiver of the National Bank of the State of Missouri, John B. Henderson & Geo. H. Shields, are held and firmly bound unto Sylvester H. Laflin and James H. Britton in the full and just sum of five hundred dollars, to be paid to the said Sylvester H. Laflin & James H. Britton, their heirs, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents, sealed with our seals, and dated this twenty-eighth day of February, in the year of our Lord one thousand eight hundred and seventy eight.

11 Whereas lately, at the September term, 1877, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between Walter S. Johnston, as receiver of the National Bank of the State of Missouri, plaintiff, and Sylvester H. Laflin and James H. Britton, defendants, judgment was rendered against the said plaintiff, dismissing his bill and for costs, and the said plaintiff, having appealed from the judgment of said court to the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such, that if the said plaintiff shall prosecute said appeal to effect, and answer all damages and costs if he fail to make good said appeal, then the above obligation to be void, else to remain in full force and virtue.

WALTER S. JOHNSTON, *Rec'r.* [SEAL.]
J. B. HENDERSON. [SEAL.]
GEO. H. SHIELDS. [SEAL.]

Approved by—
JOHN F. DILLON, *Judge.*

Depositions read in the above-entitled cause.

EDWARD P. CURTIS, being produced, sworn and examined on the part of the plaintiff, deposes and says:

Q. You were cashier of the National Bank of the State of Missouri at the time of its suspension?

A. I was, sir.

Q. What position have you now, or what relation do you sustain to the bank?

A. I am clerk for the receiver.

Q. Do you know whether or not, on the sixteenth day of May, 1877, and prior thereto, Sylvester H. Laflin was a stockholder in said bank?

A. Yes, sir.

Q. And if so, to what extent?
A. He owned eighty-five shares.
Q. How long prior thereto, if you know, had he been a stockholder in that bank?
12 A. This ledger here before me (witness refers to a ledger) goes back to '68—1868, at which time he had fifty-four shares. I can look farther back.
Q. How many shares did you state he owned on the 16th day of May, 1877?
A. He owned eighty-five shares.
Q. What is the nominal value of those shares?
A. One hundred dollars a share.
Q. Do you know anything about the transfer of that stock by Mr. Laflin to any one on the 16th day of May, or subsequently thereto?
A. Yes, sir; they were transferred on that day—(looking at ledger.)
Q. What book are you reading from?
A. From stock-ledger, folio 500.
Q. When was that stock transferred?
A. On the 16th day of May, 1877.
Q. Where do you find that?
A. On the transfer-book.
Q. On which page?
A. No page in that book. That is a chronological book—day 16th May—(witness reading from book), "For value received, I, S. H. Laflin, hereby assign & transfer to J. H. Britton, trustee, eighty-five shares of the capital stock of the National Bank of the State of Missouri, on which eighty-five hundred dollars have been paid. In testimony whereof, I set my hand this 16th day of May, 1877. S. H. Laflin, by Girault, attorney."
Q. At the time that transfer was made, state whether or not certificates were surrendered; if so, whether you have them in possession.
A. Yes, sir; there were. I have them.
Q. Please produce them.
A. Here they are.
Q. Are these certificates numbers #33, #918, #1571, #1669, #1937, the certificates that were surrendered at the time of the transfer of that stock by Mr. Laflin?
A. They were, sir.
(Certificate number 33 for fifty-four shares, dated December 5th, 1866, hereto attached, and marked Exhibit A.
Certificate number 918 for ten shares, dated January 15th, 1868, hereto attached, and marked Exhibit B.
Certificate number 1669 for eleven (11) shares, dated Jan'y 28th, 1873, hereto attached, and marked Exhibit C.
Certificate number 1571 for five shares, dated September 10th,
13 1872, hereto attached, and marked Exhibit D.
Certificate number 1937 for five shares, dated December 15th, 1876, hereto attached, and marked Exhibit E.)
Q. Please examine the signatures. Are you acquainted with the signature of the defendant, Sylvester H. Laflin?
A. Yes, sir.
Q. Please examine the signature to the power of attorney on the back of those certificates, and state whether or not it is the signature of the defendant Mr. Laflin.
A. It is, sir.

Q. When those certificates were surrendered, state what other certificates, if any, were issued in lieu thereof.

A. No other certificates were issued.

Q. Please state why, if you know.

A. They were transferred to the account of J. H. Britton, trustee for the bank, and there was no necessity for issuing other certificates.

Q. Do you know how much, if anything, was paid by J. H. Britton, trustee, for those certificates, or for that transfer?

Q. Forty-five shares at fifty-nine and a half, and forty shares at fifty-nine, making $5,037 $\frac{50}{100}$ for the eighty-five shares.

Q. Have you the check, the memorandum made by the bank and its officers at the time of that transfer?

A. Yes, sir.

Q. Please produce them.

A. (Witness produces check.) This is the check paid for the stock.

Q. On what date?

A. On the 16th day of May, 1877.

Q. Whose signature is to that check, if you know?

A. That is the signature of J. H. Britton.

(Witness identifies check, dated May 16th, 1877, on National Bank of the State of Missouri, payable to the order of P. F. Keleher & Co., hereto attached, and marked Exhibit F.)

(Objected to by defendant's counsel, as being irrelevant, incompetent, and immaterial, and because said check is signed by J. H. Britton, individually and not as trustee, and because it is payable to the order of P. F. Keleher & Company in their individual capacity, and not as
14 agents of this defendant, and because it does not tend to prove that any part of the written or printed matter has any bearing upon this transaction.)

Q. Please state what papers are those which you have in your hand, and which were attached to this check.

A. These are what we designate as "office checks," by which the amount of money which was necessary to make the account good at the time of the transfer were charged to the account of the bank.

(Objected to, because the account must speak for itself; and, second, because the writing which is offered must speak for and explain itself, and cannot be varied by parol testimony of the witness.)

Q. Who made out those office checks?

A. The general ledger bookkeeper, Mr. Girault.

Q. Are you acquainted with his handwriting?

A. I am, sir.

Q. You identify this as having been made out by him?

A. I identify that as having been made out by him.

(Witness identifies office check, dated May 16th, 1877, National Bank of the State of Missouri, hereto attached, and marked Exhibit G. Also office check, National Bank of State of Missouri, dated May 16th, 1877, hereto attached, and marked Exhibit H.)

(Objected to on same grounds of objection stated in regard to the admissibility of the check for $5,037.50, signed by J. H. Britton.)

Q. Please explain the nature of those office checks, what they were, and for what they were made.

(Objected to on the ground that no explanation orally is admissible to vary the terms of the written instrument itself; that the written instrument itself being produced is the best evidence of the contents and purposes, and that it cannot be varied, explained, or contradicted by the testimony of the witness.)

A. The object of those office checks were to transfer a sufficient
15 amount of funds to the credit of J. H. Britton, to make the check which he gave in payment for the stock good.

Q. Transfer where?

A. From the account on our general ledger, which we called "sundry stocks."

Q. What funds?

A. The funds of the bank.

Q. Have you the books of the bank in which this transaction was entered? if so, please produce them.

A. Yes, sir. Here is——

Q. Please state where you are reading from.

A. I have the transfer—the general ledger journal, folio 613.

Q. Is that the book, the original entry for the bank—the book for the original entry of those office checks?

A. They are the vouchers. In bank bookkeeping the original entry is in the nature of a check, which is either the check of the party authorized to draw it, or an office check; and those which I call office checks are the original entries; they are then transferred in the journal, which is the original on the books.

Q. That is the transaction which appears on the books?

A. It is charged (reading from book) sundry stocks, forty shares at fifty-nine, $2,360.00; forty-five shares at fifty-nine and a half, $2,677 $\frac{50}{100}$.

Q. Please read the whole of that entry.

A. (Witness reading:)

50	shares of stock of National Bank of State of Mo. at			60....	$3,000	
9	"	"	"	"	....	540
40	"	"	"	"	59....	2,360
45	"	"	"	"	59½....	2,677	50
20	"	"	"	"	....	1,190

aggregating 9,767.50, debited to that account that day.

Q. What other entry was then made, if any, in the books of the bank in regard to this transaction?

A. J. H. Britton was credited——

Q. What book and page?

A. On what we call notes paid book, folio 765.

Q. Please read that entry.

A. J. H. Britton is credited—

	59 shares National Bank of the State of Missouri at	60	$3,540	
16	45 shares	59.50	2,677	50
	40 "	59	2,360	00

Q. That is all that entry?

A. That is all of this entry.

Q. Please explain what that book—this notes paid book—is, and why the entry was made in that book.

A. It is the book for original credits to accounts which are not in nature of deposit tickets; the credits are entered to the different accounts.

Q. Credits for what?

A. Credits of any nature, before they go to any account, are put into this book. It is merely called notes paid book, because all the notes entered up paid are in that book.

Q. Then that account-book includes more than notes paid?

A. Yes, sir; a great deal more; it properly should be called "day-book."

Q. As bookkeeper of the bank, state whether or not you entered in that book all of the credits of the bank of every character whatever from day to day.

(Objected to because it is immaterial to this inquiry.)

Q. State what accounts the bank kept in this book which you call notes paid book.

A. Well, all of the credits to the accounts of the bank are put into this book, except the credits made by deposit tickets, either directly or indirectly. (Witness looking at the book.) Here is another part of that entry I did not read. Another credit for twenty shares at $59.50, $1,190; that accounts for the difference.

Q. Is there any other entry of this transaction in the books of the bank; if so, where?

A. It follows from the journal into the ledger.

Q. Have you that?

A. Yes, sir. Here is the posting.

Q. What page?

A. General ledger, folio 35. (Witness reading from general ledger.)

Sundry stocks is indebted on the 16th day of May, 1877.

17	59 shares National Bank of the State of *State of* Missouri stock, at 60	$3,540	
40	shares National Bank of the State of Missouri stock, at 59.	2,360	
65	" " " " " " " " " 59.50.	3,867	50
	Aggregating.....	9,767	50

debited to that account.

Q. Did you say 65 shares?

A. I said 65 shares, at 59½.

Q. And forty shares to somebody else?

A. Yes, sir.

Q. What account is it that you read from now?

A. That is called the "sundry stocks."

Q. Of what?

A. Everything in the nature of stock of an incorporated company which was owned by the bank was charged to that account.

Q. That is, the sundry stock account, from which you read, represents the stocks held and owned by the bank

A. Yes, sir.

Q. Who authorized the entries to be made in the manner in which you have suggested?

A. The president, I presume.

Q. Who was the president?

A. James H. Britton.

Q. How long had Mr. Britton been president of the bank?

A. Since about the time of its organization.

Q. That was in 1866, I believe?

A. Yes, sir.

Q. Do you know certainly whether or not the president authorized these charges to be made in this way?

A. No; I cannot call to mind any specific instructions. The custom was——

(Counsel for defendant objected to witness stating the custom.)

Q. Any general instructions on this subject?

A. The object of those office checks were to transfer a sufficient
15 amount of funds to the credit of J. H. Britton, to make the check which he gave in payment for the stock good.

Q. Transfer where?

A. From the account on our general ledger, which we called "sundry stocks."

Q. What funds?

A. The funds of the bank.

Q. Have you the books of the bank in which this transaction was entered? if so, please produce them.

A. Yes, sir. Here is——

Q. Please state where you are reading from.

A. I have the transfer—the general ledger journal, folio 613.

Q. Is that the book, the original entry for the bank—the book for the original entry of those office checks?

A. They are the vouchers. In bank bookkeeping the original entry is in the nature of a check, which is either the check of the party authorized to draw it, or an office check; and those which I call office checks are the original entries; they are then transferred in the journal, which is the original on the books.

Q. That is the transaction which appears on the books?

A. It is charged (reading from book) sundry stocks, forty shares at fifty-nine, $2,360.00; forty-five shares at fifty-nine and a half, $2,677 $\frac{50}{100}$.

Q. Please read the whole of that entry.

A. (Witness reading:)

50	shares	of stock	of National Bank	of State	of Mo.	at 60....	$3,000
9	"	"	"	"	"	"	540
40	"	"	"	"	"	59....	2,360
45	"	"	"	"	"	59½....	2,677 50
20	"	"	"	"	"	"	1,190

aggregating 9,767.50, debited to that account that day.

Q. What other entry was then made, if any, in the books of the bank in regard to this transaction?

A. J. H. Britton was credited——

Q. What book and page?

A. On what we call notes paid book, folio 765.

Q. Please read that entry.

A. J. H. Britton is credited—

	59	shares National Bank of the State of Missouri	at 60	$3,540
16	45	shares	59.50	2,677 50
	40	"	59	2,360 00

Q. That is all that entry?

A. That is all of this entry.

Q. Please explain what that book—this notes paid book—is, and why the entry was made in that book.

A. It is the book for original credits to accounts which are not in nature of deposit tickets; the credits are entered to the different accounts.

Q. Credits for what?

A. Credits of any nature, before they go to any account, are put into this book. It is merely called notes paid book, because all the notes entered up paid are in that book.

Q. Then that account-book includes more than notes paid?

A. Yes, sir; a great deal more; it properly should be called "day-book."

Q. As bookkeeper of the bank, state whether or not you entered in that book all of the credits of the bank of every character whatever from day to day.

(Objected to because it is immaterial to this inquiry.)

Q. State what accounts the bank kept in this book which you call notes paid book.

A. Well, all of the credits to the accounts of the bank are put into this book, except the credits made by deposit tickets, either directly or indirectly. (Witness looking at the book.) Here is another part of that entry I did not read. Another credit for twenty shares at $59.50, $1,190; that accounts for the difference.

Q. Is there any other entry of this transaction in the books of the bank; if so, where?

A. It follows from the journal into the ledger.

Q. Have you that?

A. Yes, sir. Here is the posting.

Q. What page?

A. General ledger, folio 35. (Witness reading from general ledger.)

Sundry stocks is indebted on the 16th day of May, 1877.

17	59 shares National Bank of the State of *State of* Missouri stock, at 60	$3,540	
40	shares National Bank of the State of Missouri stock, at 59.	2,360	
65	" " " " " " " " " " 59.50.	3,867	50
	Aggregating	9,767	50

debited to that account.

Q. Did you say 65 shares?

A. I said 65 shares, at 59½.

Q. And forty shares to somebody else?

A. Yes, sir.

Q. What account is it that you read from now?

A. That is called the "sundry stocks."

Q. Of what?

A. Everything in the nature of stock of an incorporated company which was owned by the bank was charged to that account.

Q. That is, the sundry stock account, from which you read, represents the stocks held and owned by the bank

A. Yes, sir.

Q. Who authorized the entries to be made in the manner in which you have suggested?

A. The president, I presume.

Q. Who was the president?

A. James H. Britton.

Q. How long had Mr. Britton been president of the bank?

A. Since about the time of its organization.

Q. That was in 1866, I believe?

A. Yes, sir.

Q. Do you know certainly whether or not the president authorized these charges to be made in this way?

A. No; I cannot call to mind any specific instructions. The custom was——

(Counsel for defendant objected to witness stating the custom.)

Q. Any general instructions on this subject?

A. They were to credit his account with those shares of the stock. These were the instructions to the bookkeeper; they were the general instructions in relation to the purchase of all these stocks, all of the stock of the National Bank of the State of Missouri. They had reference to these transfers of stock of the Nation' Bank of the State of Missouri.

Q. Have you any other entries on the books of the bank showing in what relation this stock was held by Mr. Britton?

A. The stock ledger which was posted——

18 Q. What book are you reading from?

A. I am reading from the "stock ledger," folio 100; account headed Jas. H. Britton, trustee for bank.

Q. When was that account first opened, first commenced?

A. Beginning as trustee——

Q. Yes, sir.

A. I see it was begun in that style, June 1st, 1872—the account of Jas. H. Britton, trustee—the balance of that account is brought into this—that runs back to 1868. There is a balance brought forward from another ledger.

Q. You do not answer my question. The question I ask is, when was this account, Jas. H. Britton, trustee for the bank, begun or commenced?

A. I think—I should suppose it was first commenced to be called under that title in full on the first of June, 1872.

Q. If that account is a continuation of another account, state what that is.

A. Continuation of the account of Jas. H. Britton, trustee.

Q. When was that first opened?

A. This book commenced January 2d, 1868; balance then carried forward from a former ledger.

Q. Please read the account Jas. H. Britton, trustee for the bank, referred to on page 100.

A. (Witness reading from ledger.) 16th of May, 1877, there is a credit "S. H. Laflin, 85 shares, $8,500."

Q. Is that the general stock ledger of the bank?

A. Yes, sir.

Q. From what funds was the funds transferred to the credit of Jas. H. Britton to pay for this stock of Laflin?

(Objected to by defendant's counsel, on the ground that unless the witness shall be allowed to vary or contradict the written testimony offered in evidence by his verbal statements, that the inquiry is inadmissible and incompetent.)

A. From the general funds of the bank.

Q. Do you know anything about the transactions which resulted

19 in these entries between Mr. Britton and Mr. Laflin, or Mr. Britton and Mr. Kelleher?

A. Nothing more than what the books show.

Cross-examination:

Q. Then how do you know, Mr. Curtis, that the funds used by Colonel Britton came out of the general funds of the bank?

A. I know his account was credited for that purpose.

Q. If you only know of that transaction by the entries of the books, the books have all been produced now, have they?

A. Yes, sir.

Q. You have shown all the entries?

A. Yes, sir.

Q. We have then all the entries in the books that you have, have we?

A. Yes, sir.

Q. Then why don't the books show that this money was paid out of the funds of the bank?

A. They do show it.

Q. In what entry?

A. In the debit of sundry stocks.

Q. In what?

A. In the debit to sundry stocks.

Q. What book is that in?

A. In the general ledger, folio 35.

Q. The one you showed us just now?

A. No, it is on folio 104.

Q. That is what you called just now the general stock ledger?

A. No, that is a different thing. You didn't ask me about that—the debit to "sundry stocks," in the ledger, page 35. (Witness reading from ledger.) "Sundry stocks, 59 shares, at 60; 40, at 59; 50, at 69½." That shows that the bank is debited with that amount. That shows that the funds of the bank, that amount of funds, was used in the purchase of that amount of stock, charged to the account of "sundry stocks."

Q. Did Mr. Laflin have any knowledge of such an entry being made in the books of the bank at the time that this transfer was made?

A. I don't know that he did.

(Objected to by plaintiffs' counsel on the ground that Mr. Laflin, as a stockholder, was bound to know of the entries in the books of the bank.)

Q. What do you say?

A. I do know that he did.

Q. Did Mr. Kelleher know it?

A. I do not know that he did.

Q. Who is Mr. Girault?

A. The general ledger book-keeper; he was at that time.

Q. When he was an employee of this bank?

A. Yes, sir.

Q. Did Mr. Laflin come up to the bank and deliver these certificates produced here, or were they brought by somebody else?

A. I do not know that he brought them up.

Q. Can you explain why it is that a check would be given for this $5,037.50, signed by J. H. Britton, individually, with no trustee or any other agency apparent upon the face of it, if the understanding at the time was that the bank was buying this stock?

A. Can I explain it?

Q. Yes.

A. That is the way it was done.

Q. Can you explain it?

A. I do not know that I can explain it; that explains itself.

Q. Can you explain why it is that there is such a lengthy account with J. H. Britton as trustee, under transactions of this sort?

A. Because there was a great many purchases like that—of a similar nature—made.

Q. Did Mr. Britton act as trustee for anybody else except this bank at any time?

A. I see no record of any other account of J. H. Britton for that purpose.

Q. Was there anything in the "transfer book" that you have shown us, that Mr. Britton acted as trustee for any one else, or that any stock was transferred to J. H. Britton as trustee?

A. There is no entry.

Q. Your transfer book does not show that he was acting as trustee for anybody else?

A. I do not think that it does.

Q. Can you explain why it is that Mr. Britton gave his check, payable to P. F. Kelleher & Co., for $5,037.50, and that on that general stock ledger of the same date (May 16th, 1877), page 100, there is an entry to S. H. Laflin of $8,500?

21 A. That is the par value of the stock; on the stock ledger it is carried through at its par value—eighty-five shares, eighty-five hundred dollars; that is the par value. This is not a dollar-and-cent-column book, but merely a record of the numbers of shares transferred from one account to another, and they are always carried through at the par value.

Q. Why didn't you require J. H. Britton to sign his signature to this check on the National Bank of the State of Missouri, payable to the order of P. F. Kelleher & Co., as trustee?

A. I had nothing to do with that.

Q. It appears to be an individual check?

A. It is an individual check, and charged on that account.

Q. These transfers or office checks that you have produced here—"credit J. H. Britton 45 shares stock National Bank of the State of Mo. at 59½," Exhibit H, and also Exhibit G, "credit J. H. Britton 40 shares of stock National Bank State of Mo., @ 59, $2,300"—why is that you didn't credit that to J. H. Britton trustee, if he was acting for the bank?

A. He gave his individual check in payment for the stock, and therefore the individual account had to be credited in order to balance.

Q. Why didn't you give him a check, "J. H. Britton, trustee," and then credit his account "Jas. H. Britton, trustee?"

A. He gave a check individually, and we had to credit the same account.

Q. Then, if this was charged to him as trustee for the bank, why didn't you keep your books correct?

A. They were correct. He made purchases as trustee, and was then debited & credited individually. He gave an individual check, and therefore the individual account had to have a corresponding credit.

Q. Your explanation is not satisfactory to me, although it may be to you; you can explain it, and I am inquiring so as to give you that opportunity. My question is, Why was it, if Mr. Britton was purchasing from Kelleher & Co. this stock of Mr. Laflin as trustee of this bank, why was it that you allowed J. H. Britton, as an individual, to receive credit

22 out of the funds of this bank and debit him with a corresponding amount in the books in his individual capacity when you knew that this matter was a matter of the bank; that the bank was buying; that it was not an individual matter; that he was acting for the bank, and therefore the books of the bank should show the correct entries of this transaction? Why, if you were cashier and kept the books correct, why were not the entries made in the name of J. H. Britton, as trustee of the bank, so as to show that it was the action of the bank, and not his individual action?

A. The books explain that it is for the bank.

Q. The books would explain that to anybody?

A. They would to any bookkeeper.

Q. Can you explain why you charged him and credited him in this transaction as an individual instead of as a trustee of the bank?

A. No other explanation than because he gave his individual check, and we had to credit his account in order to make his own account good.

Q. Why did you allow him to do that if you knew that this was not a real transaction?

A. The books show what it was.

Q. The books show that it was a private, individual check, and you credit his individual account with that amount, not as trustee, but as James H. Britton—no trustee about it—why did you do that?

A. In order to make his account good.

Q. Don't you see that a person who didn't understand that you were doing business of that sort might look all through your books and never have any warning of what you were doing?

A. If they would look through the whole entry, they would understand it all.

Q. Have you any reason to believe that Mr. Laflin was present at the time that this transfer was made?

A. I should infer he was not, from the book.

Q. It was made by Mr. Girault, your own bookkeeper?

A. Yes, sir, as attorney.

Q. Under that blank power of attorney that is endorsed on
23 each of these certificates?

A. Yes, sir.

Q. Do you know who wrote the name in these certificates?

A. That is his own handwriting.

Q. Do you know whether Mr. Laflin ever authorized Mr. Girault to write his name in there?

A. He did.

Q. How do you know it?

A. By leaving it blank.

Q. You mean that you infer that he did, because he left a blank place?

A. Yes, sir.

Q. And you infer that by leaving the blank there, that Mr. Girault or anybody else might fill in their name in there, and that Mr. Laflin, by his simply signing the power of attorney, had authorized that to be done?

A. Yes, sir.

Q. Why do you reach that conclusion?

A. It is the general custom.

Q. Is it the usual custom?

A. Yes, sir.

Q. All over the world?

A. Yes, sir.

Q. So generally known as to be well understood?

A. Yes, sir.

Q. Is it of universal general application in the transfer of stock?

A. I believe it is.

Q. You are conversant in this business—with transactions in stock; you have been in the business a great many years?

A. Yes, sir.

Q. Are you acquainted with the customs of transferring stock—the different modes of transferring stock?

A. Yes, sir.

Q. You say that this is the custom, and so general as to be known and understood to the business community engaged in these kind of transactions?

A. I do.

Q. It didn't necessarily follow that the party whose name is written to these blank powers of attorney would be present when the transfer is made on the books?

A. No, sir.

Q. It passes from hand to hand until the transfer is ready to be made?

A. Yes, sir.

Q. That is the usual custom?

A. Yes, sir.

Q. You would not regard it as indicating any negligence on the
24 part of a man that wanted to sell his stock, if he would grant the power in that way?

A. No, sir.

Q. When this check # 743, dated St. Louis, May 16th, 1877, signed J. H. Britton, to the order of P. F. Kelleher & Co., and endorsed P. F. Kelleher & Co., was presented to your counter, who was the money paid to?

A. I should infer from the endorsement that it was paid to P. F. Kelleher & Co.

Q. What book would show the first entry made in your books of that transaction?

A. I believe the tellers generally have memorandum books in which they enter those checks, but the first book would be this journal (indicating book before him).

Q. Have you got that teller's book?

A. No, sir; I do not know where to find it. It is a little memorandum book, and we never keep them. Here is the entry.

Q. What is the date?

A. Dated 16th day of May.

Q. Please read—what are you reading from now?

A. The "city ledger"—individual journal we call it—from A to K, folio 92.

Q. Please read the heading of the account.

A. The only heading is Wednesday, May 16th, 1877. This is the account of Jas. H. Britton; this is the journal; he is debited with his check, $5,037.50.

Q. There is no trustee in that entry?

A. No, sir.

Q. Just Jas. H. Britton, individually?

A. Yes, sir.

Q. Where is the next entry of that transaction?

A. Posted to the ledger.

Q. In what place?

A. I will show you. On the individual ledger, A to K, folio 104, the account of Jas. H. Britton is debited, May 16th, with those checks, aggregating $13,726.40, which is the aggregate of these debits.

Q. What do these three letters on page 92 of your city journal mean, opposite the figures $5,037.50? I see these little letters "d-i-s".

A. That is sundry credits.

Q. What do "d i s" mean?

A. Discount.

Q. What do you put discount opposite that for?

A. It is not opposite that. That is opposite 4,178.64. These
25 are credits, and these are debits.

Q. Can you tell without too much trouble how much Jas. H. Britton had to his individual credit in this book on that day, May 16th, 1877?

A. On the 15th of May, he had $385.45 to his credit.

Q. What on the 16th?

A. On the evening of the 16th, he had $605.19 to his credit.

Q. What on the 17th?

A. On the 17th he was overdrawn.

Q. How much?

A. $2,559.91.

Q. Was this book under your control?

A. Constructively.

Q. What do you call this book?

A. This is the balance book, showing the daily balances of each individual account.

Q. Do those red figures mean that the account is overdrawn?

A. Yes, sir.

Q. What page do you number this book called "balance book"?

A. We call it folio 44. We don't go by numbers.

Q. You call it folio 44?

A. Yes, sir.

Q. I have called your attention to an entry which you have stated was Jas. H. Britton's individual account?

A. Yes, sir.

Q. Will you please look on line above it, on page 44 of this balance-book, and trace back that row of red figures to the left margin of that page, and tell me what entry this is?

A. Jas. H. Britton, trustee for Joseph Brown.

Q. What Joseph Brown is that?

A. Captain Joseph Brown, the ex-mayor.

Q. That shows his account as trustee for Joseph Brown?

A. Yes, sir.

Q. Just now you stated he never acted as trustee for anybody but the bank?

A. You are speaking of stock transactions?

Q. Yes, sir.

A. This is not a stock transaction—this a different transaction. You are asking me now relevant to his account as trustee on the stock ledger. This doesn't show that he was a trustee for any other party but the bank.

Q. Doesn't this check show that he was trustee for Captain Joseph Brown?

A. That is a different thing.

26 Q. That runs through a good long time—that trusteeship runs through some time?

A. The trusteeship?

Q. Yes.

A. Yes.

Q. Don't your books show that he commenced acting as trustee in the year of 1868?

A. That account was commenced on the 12th of December, 1876, with Brown; December 12th, 1876, is not a very long time.

Q. Can you account for it, why it was that on the 16th day of May, Mr. Britton, as an individual, had to his credit $605.19?

A. Yes, sir.
Q. And that on the 17th day his account was overdrawn $2,559.19?
A. Yes, sir.
Q. And that on the 18th day, the day his check would have come in—the check marked Exhibit F—his account was credited by a balance of 6,365.19?
A. Colonel Slayback, my testimony shows that the check was paid on the day it was issued, and I have testified to that effect. The record shows that it was paid on the day it was issued.
Q. Did it go through the clearing-house?
A. No, sir.
Q. It was paid at the counter?
A. It appears to have been paid at the counter.
Q. This balance-book shows what was left at night after paying all the office checks?
A. Yes, sir.
Q. That is his individual account?
A. Yes, sir.
Q. There is no trustee in that?
A. No, sir.
Q. Then that check was paid out of his individual account?
A. Yes, sir.
Q. Then after paying that check he still had $605.19 left?
A. Yes, sir.
Q. Then James H. Britton, individually, had to his individual credit here on that day, enough money to pay this check of $5,037.50?
A. Certainly.
Q. And a surplus, something over that?
A. Yes, sir.
Q. Colonel Britton's credit was good at that time?
A. Yes, sir.
27 Q. He was regarded as a man of means and able to buy five thousand dollars' worth of stock at any time he wanted to?
A. Yes, sir.
Q. I' wouldn't have awakened any suspicion that there was anything wrong about it, if he had wanted to buy that much stock?
A. I presume not.
Q. How is it, that he seems to have dealt so much in the stocks of the bank from 1868 up to this time; is it not because he was constantly buying and selling?
A. I am not able to explain that.
Q. Did he not, in point of fact, often buy and sell shares of stock in this bank?
A. Individually?
Q. Yes, sir.
A. I presume he did; the account shows that fact.
Q. The account shows he did?
A. We have looked at the account on that point.
Q. Please to do so now.
A. Yes; his private account on the ledger—his stock account—shows transactions of that kind.
Q. What do you read from now?
A. Stock ledger, folio 93.
Q. What does that show?
A. Jas. H. Britton's individual account as stockholder.
Q. From when till when?

A. That is from January, 1868, up to September, 1873; that is the last. There is a debit on October 6th, 1874.

Q. After that entry on folio 96, as you term it, of your stock ledger, it seems that Colonel Britton didn't after that hold any stock at all individually?

A. It does not show that at all.

Q. Where is it continued after that?

A. There it is, right there. It shows that he had 1,542 shares to his credit. The difference between the debits and the credits is the resulting credit. The difference also appears on the next page, 97—Jas. H. Britton held 720 shares.

Q. At 7,200 dollars?

A. No; not at all.

Q. What do you call those figures?

A. It only shows he had ten (10) brought down.

28 Q. As trustee for anybody else, not as trustee for the bank?

A. No, sir.

Q. Who made this word?

A. Mr. Girault.

Q. When did he make it?

A. In 182, when he transferred it.

Q. Here the words "for bank" are written up over the word trustee and the word "continued"; what does that mean?

A. It was put in there afterwards to show that it was for the bank.

Q. How do you know that?

A. Because I remember instructing him some time ago to put on the ledger "for bank," to designate that it was bank business.

Q. Did you direct that to be done?

A. I remember directing it.

Q. This alteration?

A. No, sir; it is no alteration.

Q. The original entry stood, "Jas. H. Britton, trustee, continued"?

A. Yes, sir.

Q. After that had been headed in that manner, you afterwards directed the words "for bank" to be written above that?

A. Yes, sir.

Q. Do you remember when you caused that to be done?

A. I remember about the time.

Q. When?

A. June, 1872.

Q. June, 1872?

A. I presume so.

Q. In the next credit, Jas. H. Britton, the words "for bank" are written in that?

A. Yes, sir.

Q. At that time—pages 98, 99, & 100—there were entries showing large numbers of operations by Colonel Britton, as trustee?

A. Yes, sir.

Q. Selling as well as buying, were they not?

A. Not much selling.

Q. Are these not sales?

A. No, sir; that is done to save space; that is presumed to be a continuation of this to save space.

Q. That is a debit?

A. Yes, sir.

Q. Did the bank get these moneys?

A. Yes, sir.
Q. Did he sell (to) these parties?
A. Yes, sir.
Q. Here is some to Web. M. Samuel, May 28, 1877.
A. Yes, sir.
Q. Twenty-five shares?
A. Yes, sir.
Q. The bank got that money?
A. Not that amount; whatever it sold for the bank got.
29 Q. N. S. Chouteau, 21 shares?
A. Yes, sir.
Q. That go to the bank?
A. Yes, sir.
Q. Why did you put in then "Jas. H. Britton, trustee?"
A. Because it was the bank's stock, & was sold for the bank.
Q. Why didn't you open a column, if the bank was buying and selling; why didn't you come out open & flat-footed, & show that the bank was buying & selling its own stock?
A. I do not know.
Q. Don't you know it was because it was against the law?
A. No, sir.
Q. Have you ever read the laws of Congress in regard to national banks?
A. Yes, sir.
Q. Don't you know that the bank has no authority to buy & sell its own stock under that law?
A. I know that under that law the bank the authority to sell its own stock, both to buy and sell. Here is one entry; this is the first entry. This was taken for an old debt in Springfield.
Q. That was to secure a debt?
A. Yes, sir.
Q. That is an exception made in the law, to secure indebtedness?
A. Yes, sir.
Q. Here is a transaction manifested in this book, that Jas. H. Britton, trustee, has been buying and selling stock for the bank. Did you know that was against the law?
A. Yes, sir.
Q. And you permitted it to be done?
A. Yes, sir.
Q. How do you account for this entry on page 96, dated October 6th, 1874, when it appears that Britton individually sold to Britton, trustee?
A. He sold 30 shares to the bank.
Q. And you stood by and let that be done?
A. I did.
Q. And you knew it was against the law?
A. The president allowed it to be done; he did it himself, and I did not feel called upon to intervene.
Q. Don't you know that Colonel Britton has been a man of means, and able to buy and sell as much as five thousand dollars' worth of stock of this bank at any time he pleased; at the time the bank failed, & for several years before that?
A. I presume so.
30 Q. And had control of large means and credit?
A. Yes, sir.
Q. Do you know whether the Comptroller of the Currency ever sanctioned the purchase of this bank stock by Colonel Britton for the bank?

(Objected to on the ground that the acts of the Comptroller of the Currency are official and of record.)

A. I understood from Colonel Britton that he had the sanction of the Comptroller of Currency to the proceeding.

Q. Was that not done to reduce the volume of the stock of the bank?

A. That was the object.

Q. Had that been done on any previous occasion?

A. Yes, sir.

Q. Give us the history of the thing as you recollect it, and what was done—the modus operandi of the operation—& when it took place.

(Objected to on the grounds, first, it is immaterial; second, that the action of the Comptroller of the Currency is an official act, and can only be proved by the records of his office.)

Q. Please go on and state the history of the transaction, if you know it.

A. What transaction do you refer to?

Q. That under which you, as cashier of this bank, suffered this thing to go on, of Jas. H. Britton, as trustee, buyihg & selling this stock for the bank.

A. We understood that Colonel Britton——

(Objected to witness stating his understanding.)

Q. State your understanding.

A. That Colonel Britton was assured by the Comptroller of the Currency that such a thing would be sanctioned, that is what I understood; I don't remember how it came to my knowledge. It may have come to me from Colonel Britton, or one of the directors.

Q. How much stock of the bank was bought in that way?

A. A reduction at one time was made of nine hundred and ten thousand dollars; and since that time the bank acquired forty-five hundred & ninety-nine shares.

Q. Through how many years had this been going on?

A. It was in 1876 that we reduced the capital stock. During 1875, I think, the first actual purchases for that purpose were made. My
31 impression is that is the year.

Q. Since that first reduction was made of nine hundred & ten thousand dollars of the stock, how many shares of stock has Colonel Britton bought as trustee?

A. I think 4,599. My recollection is that it is footed up in pencil, I think, 4,599.

Q. The nominal value of that would be $459,900, par value?

A. Yes, sir.

Q. You didn't buy any as trustee, did you?

A. I can't call to mind that I bought any in particular.

Q. Any in particular?

A. I can't call to mind having bought any.

Q. Did you, when he was absent, ever do anything of that kind in his name and report it to him?

A. Yes, sir; I think there were transactions of that kind occurred.

Q. Was that done under the general plan of reducing the amount of the stock?

A. Judge Bates paid for some that way and gave his check on the bank.

Q. And took an office check to reimburse him?

A. Yes, sir.

Q. Was Judge Bates at that time one of the directors?

A. He was vice-president.

A. Yes, sir.
Q. Did he sell (to) these parties?
A. Yes, sir.
Q. Here is some to Web. M. Samuel, May 28, 1877.
A. Yes, sir.
Q. Twenty-five shares?
A. Yes, sir.
Q. The bank got that money?
A. Not that amount; whatever it sold for the bank got.
29 Q. N. S. Chouteau, 21 shares?
A. Yes, sir.
Q. That go to the bank?
A. Yes, sir.
Q. Why did you put in then "Jas. H. Britton, trustee?"
A. Because it was the bank's stock, & was sold for the bank.
Q. Why didn't you open a column, if the bank was buying and selling; why didn't you come out open & flat-footed, & show that the bank was buying & selling its own stock?
A. I do not know.
Q. Don't you know it was because it was against the law?
A. No, sir.
Q. Have you ever read the laws of Congress in regard to national banks?
A. Yes, sir.
Q. Don't you know that the bank has no authority to buy & sell its own stock under that law?
A. I know that under that law the bank the authority to sell its own stock, both to buy and sell. Here is one entry; this is the first entry. This was taken for an old debt in Springfield.
Q. That was to secure a debt?
A. Yes, sir.
Q. That is an exception made in the law, to secure indebtedness?
A. Yes, sir.
Q. Here is a transaction manifested in this book, that Jas. H. Britton, trustee, has been buying and selling stock for the bank. Did you know that was against the law?
A. Yes, sir.
Q. And you permitted it to be done?
A. Yes, sir.
Q. How do you account for this entry on page 96, dated October 6th, 1874, when it appears that Britton individually sold to Britton, trustee?
A. He sold 30 shares to the bank.
Q. And you stood by and let that be done?
A. I did.
Q. And you knew it was against the law?
A. The president allowed it to be done; he did it himself, and I did not feel called upon to intervene.
Q. Don't you know that Colonel Britton has been a man of means, and able to buy and sell as much as five thousand dollars' worth of stock of this bank at any time he pleased; at the time the bank failed, & for several years before that?
A. I presume so.
30 Q. And had control of large means and credit?
A. Yes, sir.
Q. Do you know whether the Comptroller of the Currency ever sanctioned the purchase of this bank stock by Colonel Britton for the bank?

(Objected to on the ground that the acts of the Comptroller of the Currency are official and of record.)

A. I understood from Colonel Britton that he had the sanction of the Comptroller of Currency to the proceeding.

Q. Was that not done to reduce the volume of the stock of the bank?

A. That was the object.

Q. Had that been done on any previous occasion?

A. Yes, sir.

Q. Give us the history of the thing as you recollect it, and what was done—the modus operandi of the operation—& when it took place.

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Q. Was that done under the general plan of reducing the amount of the stock?

A. Judge Bates paid for some that way and gave his check on the bank.

Q. And took an office check to reimburse him?

A. Yes, sir.

Q. Was Judge Bates at that time one of the directors?

A. He was vice-president.

Q. When was that?

A. I don't remember the time of that transaction.

Q. Did Mr. Kelleher, or any member of the firm of P. F. Kelleher & Co., at the time that they collected the money on this check, signed by Jas. H. Britton, did they know that you were giving Colonel Britton what you call an office check, to reimburse him out of the funds of the bank?

A. I do not know.

Q. Then, so far as you know, Mr. Kelleher, when he took this check, took it as its face indicates, that he was getting the check of J. H. Britton, individually?

A. That is what the record shows.

Q. That is, as far as you know?

A. As far as I know.

Q. Can you remember whether Mr. Kelleher got it in person or not?

A. I don't know anything about it, except by the endorsement on it.

32 Q. Mr. Laflin was not paid for his stock by any check on your bank?

A. No, sir.

Q. So far as you know, Mr. Kelleher, or P. F. Kelleher & Co., paid Mr. Laflin out of funds of their own for this stock?

A. I know nothing about that.

Q. Can you state by reference to the books, or of your own memory, whether on the 16th day of May, 1877, Jas. H. Britton, as an individual, got a discount at this bank?

A. Yes, sir; he did.

Q. How much?

A. A credit of $4,178.64.

Q. Do you mean to say that in all these shares of stock, 4,599 shares of stock, that in every instance office checks were given to Colonel Britton to make good his individual account?

A. No, sir.

Q. It was not done that way every time?

A. Not every time.

Q. How was it done generally?

A. Generally?

Q. Yes.

A. Generally that way, most of the individual transactions; although, in others, some larger transactions were not.

Q. How were they conducted?

A. We have just seen a transaction of a thousand shares which were purchased from the estate of John J. Roe.

Q. When was that?

A. The book will show, the 28th of May.

Q. What year?

A. This year, 1877.

Q. Did Colonel Britton buy that?

A. No, sir.

Q. Who bought it?

A. The bank.

Q. Of whom?

A. It would be hard to say of whom.

Q. I would like to know.

A. I don't know.

Q. Who got the money for it?

A. It went to pay some notes which the bank held against John J. Roe.

Q. Did he owe the full amount of the value of the stock?

A. Yes, sir.

Q. His estate did?

A. I don't know; that is a question of law.

Q. You cancelled the stock & credited the indebtedness by the proceeds?

A. That is it exactly.

33 Q. Had the bank been holding that stock as collateral for the indebtedness?

A. No, sir.

Q. How did they get it?

A. They got it from the Bank of Commerce.

Q. How did the Bank of Commerce get it?

A. Roe deposited it as collateral.

Q. With that bank?

A. With that bank.

Q. Did you buy it from that bank?

A. Yes, sir; paid that bank the indebtedness, & took the stock and cancelled the stock.

Q. And the stock you took for the indebtedness to this bank?

A. Yes, sir.

Q. How much did you pay for it?

A. $100,000.

Q. Then, did you hold the estate of John J. Roe for the surplus?

A. There wasn't much surplus left. It was just par, and went to balance the other.

Q. Did you give par for it?

A. Yes, sir.

Q. You paid $100,000 for this claim against the estate of John J. Roe?

A. Yes, sir.

Q. Did you give one hundred per share for stock that was only worth fifty-nine?

A. I cannot answer.

Q. It was not worth that much May 28.

A. It appears not.

Q. When did this bank suspend?

A. On the 20th.

Q. It was eight days after the bank suspended?

A. Oh, no; the 20th of June the bank suspended.

Q. The transaction of Mr. Laflin took place on the 16th day of May?

A. Yes, sir.

Q. And the 28th was the 28th day of the same month in which the transaction of Mr. Laflin took place?

A. Yes, sir.

(Counsel for plaintiff objects to all the testimony in regard to the sale of the stock of John J. Roe as immaterial and irrelevant.)

Q. On page 92 of this book, which you call the "Depositors' journal," what do the letters "c-o-l-l" mean opposite Colonel Britton's name as an individual there?

A. The technical translation is "collection," an entry made in the notes paid book.

34 Q. This shows that he collected that much; that you collected that much on his account?

A. That much was passed to his credit.
Q. How much?
A. 1,190 & 8,577.50.
Q. How much in all then was put to his credit from collections that day, the 16th of May?
A. $9,767.50.
Q. Are you able to state how much Colonel Britton's individual account had to its credit that day before he got that discount, and before the collections were made?
A. I read that balance, three hundred and some odd dollars. On the morning of the 16th of May he had a balance of three hundred & some odd dollars.
Q. To his credit?
A. To his credit.
Q. After paying his checks he still had a balance?
A. After paying the checks he had a balance; yes, sir.
Q. The credits he got that day overcame his checks?
A. Yes, sir.
Q. Mr. Curtis, who kept the books of entries, the records and proceedings of the board of directors of this bank in the year 1873?
A. I did.
Q. How many years previous thereto did you keep them?
A. Since the year of 1866.
Q. Was that when the bank first started?
A. Yes, sir.
Q. During that time, did you have charge of the books?
A. Yes, sir.
Q. And have charge of them yet?
A. Yes, sir.
Q. Can you point to any record where the board of directors authorized Colonel Britton, as trustee of the bank, to purchase stock?
A. No, sir.
Q. Then, if he had any authority to buy stock as trustee of the bank, where did he get it?
A. I am not able to state.
Q. You are sure he had no written authority from the records of the meetings of the board of directors?
A. I am quite confident.
Q. Nor any vote of the stockholders authorizing him to do so?
A. The stockholders authorized the previous purchase.
Q. That is not an answer to my question. Mr. Curtis, I wish to confine your attention to this particular transaction in regard
35 to the sale by Mr. Laflin of his stock. Was there anything on the records to show that James H. Britton was acting for the bank in giving his individual check to P. F. Kelleher & Co. for the money to pay P. F. Kelleher & Co. for that stock?
A. The entries are made on all the books.
Q. Mr. Laflin never saw these entries?
A. Not that I know of.
Q. His attention never was called to them?
A. No, sir.
Q. You didn't require him to come up to the bank and be present in person?
A. I did not, sir.
Q. You understand that Mr. Girault wrote his name in there—in that

blank in the power of attorney, that had been left, without Mr. Laflin's knowing it?

A. Yes, sir.

Q. Can you show us that book of the records of the board of directors?

A. Yes, sir.

Q. Will you produce it?

A. Yes, sir.

(Witness here produces the minutes of the board of directors, the proceedings of the board of directors, kept by himself, from the beginning of the operation of the bank up to its close.)

Q. Please examine that book and state, if, after a careful examination, you can find any authority by the board of directors appointing James H. Britton trustee for the purchase of any stock for the bank.

A. Do you want me to go all through the record?

Q. State if, after careful examination, you find any such record.

A. I am satisfied there is no such record.

Q. Have you ever carefully examined the books?

A. No, sir.

Q. Will you do so now?

A. Must I examine them ab initio, from when——

Q. Just to satisfy yourself.

A. I am quite satisfied no resolution of that kind was ever passed.

Q. (To Counsellor Shields.) You admit that?

A. I cannot until I examine the records.

Q. How do you know that Jas. H. Britton, trustee, was not trustee for some of these directors individually?

36 A. Because I knew that the stock that stood in the name of Jas. H. Britton, trustee, belonged to the bank.

Q. That is your only means of knowledge?

A. I knew that it had been paid for with the bank's money & belonged to the bank.

Q. I am asking you now, how do you know he was not acting as trustee for other parties also?

A. Because, then other entries would have been made.

Q. He was trustee for Jo. Brown?

A. We are talking now about stock transactions—that was a money transaction.

Q. I am asking now about those entries made of Jas. H. Britton, trustee, when it doesn't show he was trustee for whom?

A. It does show when he was trustee for the bank.

Q. What does that first entry—doesn't that show that he was merely trustee, and doesn't say for whom?

A. I know it was for the bank, and therefore had the words "for bank" added to the ledger account.

Q. The first entry doesn't have those words?

A. I don't know that. I knew what it was for. We all knew it was bank stock, because the stock which the bank took for debts all went to the credit of that account.

Q. Were those shares of stock that were taken for bad debts, credited to Jas. H. Britton, trustee?

A. Yes, sir. All the stock the bank was owner of by purchase or acquisition for old debts, or any other way, were credited to that account. Hence there could be no mistake that the stock credited to this account had been paid for by the bank & belonged to the bank.

Q. Why didn't you head that account, "National Bank of the State of Missouri"?

A. I did not anticipate any inquiry from Colonel Slayback to that effect, and thought the words "for bank" were sufficient. I' was sufficient for us to know. There was only one bank so far as we were concerned, and the words "for bank" were all that was necessary for us.

Q. You don't state for what bank?

A. State for this bank.

37 Q. Answer my question directly. Your expression "James H. Britton, trustee for bank," don't state for what bank?

A. Certainly it don't state for what bank.

Q. What do you say your object was in having all the shares held by the bank, acquired as security for debts and otherwise, entered to the credit of Jas. H. Britton, trustee for the bank, instead of the name of the bank itself directly?

A. I' was more convenient; there is no other reason I know of.

Q. It was done just for the sake of convenience?

A. Just for the sake of convenience.

Q. Why didn't you separate those cases where he bought & sold for the bank, and the transactions conducted in his individual name?

A. They are separated.

Q. This Laflin transaction, was that not done on his individual account?

A. That was bought for the bank. We knew at the time it was bought for the bank.

Q. Why didn't you require the transaction to be done in his name as trustee, instead of individually?

A. It is not for me to say. He chose to do it that way; he chose to give his own check for it and have the account credited that way, and I did not feel called upon to intervene.

Q. Have you any other book somewhere, showing on the stub of it something about this transfer?

A. I do not know what you refer to. The transfer book is the only book we have.

Q. Let me see that, will you?

(Witness produces transfer book.)

Q. In any sales that were made by Colonel Britton, as trustee for the bank, were not some of the stock sold at an advance over the price paid for them?

A. My impression is, not; that they were sold at the same price.

Q. Did the bank ever get any profits from such sales?

A. I think not.

Q. If any profit was made, did it go to the bank or individual account?

A. If any profit was made, it went to the bank.

Q. Wasn't a profit made in some of the cases?

38 A. I don't think there was. If any profit was made, it went to the bank account. I don't think there was any. There was only one or two sales made, and I think they were sold at the same price. The only ones I can recall are those made to Mr. Samuel and Mr. Chouteau.

Q. And in no case that you can remember was any profits realized?

A. Not lately. I have an indistinct recollection that one time when the bank sold stock there was a profit. Of course that went to the bank.

Q. The bank got the profit in that transaction?

A. Yes, sir.

Q. I will ask you if there was an examination made of this bank's affairs in March, 1877?

A. Yes, sir.

Q. Did the bank examiner at that time see the entries you have shown us, of this bank's stock standing in the name of Jas. H. Britton, trustee?

A. I think he did.

Q. Did he know that he was holding them for the bank?

A. Yes, sir.

Q. Did he know that some of it had been acquired by some other means besides taken as security for debts due the bank?

A. I believe he did.

Q. Do you know whether or not he reported that fact to the Comptroller of the Currency?

A. I presume he did. I do not know.

Q. Did you ever receive any official communication from the Comptroller of the Currency, showing that he knew it?

A. I have no record of any official notice.

Q. Have you any communication showing that he knew this purchase made by Colonel Britton was for the bank?

A. No, sir.

Q. No letters?

A. No, sir.

Q. No orders?

A. No, sir.

Q. Or communications of any kind?

A. No, sir.

Q. Have you any copy of the bank examiner's report made in March?

A. I have not.

Q. Did Web M. Samuel and N. S. Chouteau pay for the stock they got?

A. Yes, sir.

39 Q. They bought it of the bank?

A. Yes, sir.

Q. And the bank was paid for it?

A. Yes, sir.

Q. Do you remember what price Mr. Chouteau & Mr. Samuel paid?

A. I do not. I can find out.

Q. Please tell us.

(Objected to as irrelevant, simply to save the point.)

A. Sixty.

Q. Mr. Samuel paid that?

A. Yes, sir.

Q. You know that the bank got credit for that?

A. Certainly for that stock—twenty shares of stock.

Q. Were those shares of stock thus issued taken from any particular lot of shares, or just from the general lot of the bank?

A. From the general lot that was purchased. (Reading.) J. H. Britton, trustee, transfers 28th day of May, 25 shares.

Q. Where you reissued those shares of stock for the bank, you cancelled them?

A. They were not cancelled.

Q. You cancelled those shares of Mr. Laflin?

A. No, sir.

Q. You never cancelled them?

A. No, sir.

Q. What do you mean by punching holes through them?

A. I presume when you say "cancel," you refer to the stock. These certificates of course we cancel.

Q. And these figures just show that Mr. Laflin had transferred the stock?

A. Yes, sir; but the stock was not cancelled.

Q. You took up the certificates and they were purchased?

A. Yes, sir; but the shares were not cancelled; they still stood in the name of Jas. H. Britton, trustee.

Q. These shares that you state you issued, you just issued certificates for twenty-five shares of stock?

A. Yes, sir.

Q. You didn't take them out of any particular lot of shares?

A. No, sir.

Q. When did Gen. John B. Henderson become director in this bank?

A. Not until he was elected, on the 29th of May.

Q. On the 29th of May, 1877?

A. Yes, sir.

40 Q. When did he buy his stock?

A. He had it before. I think he got twenty-five shares on the 29th of May, that had been standing under the name of trustee, and he had it transferred to him on that day.

Q. Who transferred it to him?

A. Carstaphen, trustee. It was standing in the name of J. H. Carstaphen, trustee.

Q. Where does Carstaphen live?

A. At Louisiana, Mo.

Q. Transferred for whom?

A. I do not know.

Q. Carstaphen, trustee, but you don't say for whom?

A. I do not know.

Q. Was he trustee for this bank?

A. No, sir.

Q. The bank had no shares in anybody else' name but Colonel Britton's?

A. No, sir.

Q. How did you manage it when he was away, and you made transactions of this kind?

A. That didn't make any difference at all. We might have called it by any other name. It was the designation we gave to the stock belonging to the bank. It was not necessary for him to be present.

Q. Who transferred it to Mr. Carstaphen, trustee?

A. J. A. Brown. That was November 17th, 1873.

Q. I will ask you if Sylvester H. Laflin——(Interrupted by Counsellor Shields.)

(Objects to all testimony in regard to stock of Chouteau, Samuel, and Henderson, as irrelevant and immaterial.)

Q. I will ask you, Mr. Curtis, what day it was that this bank suspended?

A. The 20th day of June, 1877.

Q. I will ask you, if on that very day Mr. Laflin was not still a depositor with this bank?

A. Yes, sir.

Q. Didn't he make a deposit that very day?

A. I think he made a deposit on the 19th day—the day preceding the closing, the last day we did business.

Q. Please state the amount.

A. I have to refer to the books.

Q. Please do so. I think it is a material fact.

A. June the 19th Mr. Laflin had entered to his credit as resi-
41 dent director, $181.31, on the 19th, the last day that we did business.

Q. Why do you say "resident director"?

A. That is the style in which he kept his account.

Q. He is not resident director?

A. He is resident director of the Laflin & Rand Powder Co.

Q. Director of the Laflin & Rand Powder Co.?

A. Yes; resident director. That is the style of his account. I am quoting now from the record.

Q. That money was deposited, you say, on what day?

A. On the 19th day. The last day we did business.

Q. Had he had any previous account to his credit here?

A. I must go to the ledger for that. My impression is he had an individual balance of eighty-seven cents.

Q. How much?

A. 87 cents.

Q. This amount he deposited was still in?

A. Yes, sir.

Q. For the Laflin-Rand Powder Co.?

A. Yes, sir.

Q. He is resident manager here for that powder co.?

A. Yes, sir.

Q. His relations, then, as depositor with the bank conti ued up to the date of its suspension?

A. Yes, sir.

Q. I will ask you a question, now. You have stated t at all of the stock that was ever held by the bank, or paid for with he bank's money, was held by Jas. H. Britton, trustee?

A. No; I didn't state that.

Q. Well, when was it changed?

A. At one time the account stood in the name of Barton Bates—some time ago.

Q. When was that changed?

A. I think it was changed about the time we made the reduction in the capital stock—after that. I think you will find that about April 27th, 1876. On the 27th of April it was all transferred to one account—to J. H. Britton, trustee.

Q. How many shares were transferred April 27th, 1876, to James H. Britton, trustee?

A. Eighteen hundred and forty-nine.

Q. At that time did Colonel Britton own any stock dividually at all?

A. Oh, yes, sir.

42 Q. How much?

A. I suppose as much as he owns now. There have been no changes in Colonel Britton's individual stock account since the 6th of October, 1874.

Q. Why have you changed on April 27th, 1876, eighteen hundred and forty-nine shares of the bank stock from Barton Bates, No. 2, to Jas. H. Britton, trustee?

A. That all the bank stock might be consolidated in one account.

Q. How many shares on that day did the bank then own of its own stock bought in?

A. All we cancelled.
Q. 9,103 shares?
A. I think there was twenty-seven shares still held over more than necessary to make that reduction.
Q. That was held by Jas. H. Britton, trustee?
A. Yes, sir.
Q. Subsequent to April 27th, 1876, did Jas. H. Britton continue to buy shares of stock for the bank?
A. Yes, sir; the bank bought it and put it under that name. We might have used A. W. Slayback as well as any other name. It was just a name to designate the account.
Q. Did you state Colonel Britton never had held any stock as trustee for anybody except the bank?
A. I do not see any record of it.
Q. That is the secret of it?
A. The secret of it. The books show. He held stock as guardian.
Q. How many shares to his account as guardian?
A. Forty-seven shares.
Q. What page and book is that in?
A. Stock ledger, folio 95.
Q. It doesn't state guardian for whom?
A. No, sir.
Q. And the original entry—the first entry, doesn't say trustee for whom?
A. No, sir.
Q. Why did you call that account Barton Bates, number 2, for the eighteen hundred & forty-nine shares?
A. It was bank stock, and we had to separate it from his individual stock.
Q. Why didn't you say "Barton Bates, trustee"?
A. I don't know why. There was no reason why.
Q. Did you have any orders about it?
A. No, sir.
43 Q. You did it of your own volition?
A. I don't remember about that. When the stock was first purchased in they may have told me to transfer it to the account of Barton Bates.
Q. Who do you mean by "they"?
A. The directors of the bank, whoever they were at that time.
Q. Was this stock held by James H. Britton, trustee, ever voted at a meeting of the stockholders?
A. I think it was.
Q. Who voted it?
A. Jas. H. Britton.
Q. Can you state when that was voted by Colonel Britton?
A. I think it was voted at the last election.
Q. What time was that?
A. The 29th of May last.
Q. Of May, 1877?
A. Yes, sir.
Q. Did the other directors of the bank know that the stock thus held by Jas. H. Britton, trustee, and voted by him, was stock held by him for the bank?
A. I presume they did, sir.
Q. What do you found your presumptions upon?
I presume, sir, it was a generally known thing among the directors

that all of the stock standing in the name of James H. Britton, trustee, was bank stock, and I presume they knew it.

Q. That was known to all the directors?

A. I presume it was.

Q. Did you officiate at that election in any capacity?

A. No, sir.

Q. Did the directors?

A. No, sir.

Q. Who acted teller for the judges?

A. John Jackson was president. I forget who the others were.

Q. Were they stockholders?

A. Yes, sir.

Q. Were they directors?

A. No, sir.

Q. Were you present?

A. Well, I was; yes, I was present. I had occasion to come in during the election.

Q. Did you tell them that Col. J. H. Britton was voting stock that belonged to the bank?

A. I did not.

Q. Then, so far as you know, the electors at that election were notified that Colonel Britton was voting shares of stock held by him as trustee, as an individual who owned them?

A. I presume so; I do not know about that.

Q. Did you, at that time, say to anybody in this city that the bank had nothing to do with the stock voted by Jas. H. Britton, trustee?

A. No, sir.

Q. Did you make any such remark as that?

A. No, sir.

Q. Have you since?

A. No, sir.

Q. Didn't you say so to Mr. Dierkey?

A. No, sir.

Redirect examination:

Q. Mr. Curtis, in your testimony yesterday in regard to page or folio 44, of depositors' balances C from A to K, you testified that on the 15th day of May Mr. Britton's account had $385.45 to his credit, and that on the 16th day of May, the evening of the 16th day, he had $605.19 to his credit, and also that, on the 16th day of May, he paid this check, or you paid this check of his for $5,037.50; will you explain how, if he only had a balance of $385.45 to his credit, that you paid this check?

A. A credit was placed to his account that same day. That represented—the $385.45 represented the balance to his credit on the morning of the 16th. At the time the check was presented you must recollect that a credit had been placed to his account.

Q. What credit?

A. The credit which I testified to from the notes-paid book.

Q. Please turn to that credit.

A. There is the credit which made his account good.

Q. What page?

A. Folio 763, notes-paid book.

Q. Please read that.

A. Jas. H. Britton has a credit of—

59 shares of stock of National Bank of State of Missouri @ 59			3,540
45	"	@ 59½	2,677 50
40	"	" 59	2,360
Aggregating			$8,577 50

Then another one, 20 shares stock, National Bank of the State of Mo., @ 59.50 ..... $190 00

45 Q. Then, in order to pay this check, $5,037.50, the funds, credits were entered to Jas. H. Britton's account?

A. Yes, sir.

Q. And those funds passed to his credit?

A. Yes, sir.

Q. Were those funds the funds of the bank, or some other person?

A. They were the funds of the bank.

Q. Please turn to what you call collection.

A. Here it is.

Q. On page 92 of depositors' journal F, A to K, you testified as to an entry, "James H. Britton, $5,037.50," after which appears the letters "c-o-l-l"; please state whether or not that sum represented the amount of the funds of the bank that were transferred to Jas. H. Britton's account on that day.

Q. It did, sir. It is the same entry in that book in another place journalized.

Q. Then "c-o-l-l," which you stated technically meant collections, was a designation of the transfer of this sum of money to Jas. H. Britton's account?

A. Yes, sir.

Q. On page 44 of the "balance book," testified to, you testified that James H. Britton, as trustee for Joseph Brown, stood overdrawn on the 15th & 16th days of May; please state whether or not account had any reference to stocks, or whether it was a money account.

A. It had no reference whatever to stocks. It was a money account.

Q. Was there any other account carried on your books in the name of James H. Britton, trustee, involving stocks?

A. There was no other account on the books; that account with him was for the bank. The only account of James H. Britton, trustee for the bank, was on the stock ledger.

Q. You spoke also of Jas. H. Britton's individual account as a stockholder. When was the last transaction by Mr. Britton as an individual?

A. The last transaction to his individual account on the stock ledger is the 6th of October, 1874, debited.

Q. Then his individual account—his individual stock account—was kept separate from his account as trustee?

A. Yes, sir.

46 Q. Did this account which Colonel Slayback examined you in regard to—did the trustee account of Jas. H. Britton include any transactions of the year 1872? If so, up to what time?

A. Jas. H. Britton's trustee account?

Q. Yes, sir.

A. It includes up to the 7th of June—last entry.

Q. What year?

A. This year.

Q. 1877?

A. Yes, sir.

Q. You stated that on your regular books account there was no account of Jas. H. Britton as trustee, but that account was carried on the stock ledger?

A. Yes, sir.

Q. What account, if any, showed he was the owner of this stock, after it was purchased of Mr. Laflin?

A. The account on the general ledger of sundry stocks showed it was owned by the bank.

Q. By what bank?

A. In this bank.

Q. National Bank of the State of Missouri?

A. Yes, sir.

(Objected to because the entries speak for themselves, and they show it was in Jas. H. Britton, trustee, and objected to the conclusion stated by the witness. That is one of the things we are trying.)

Q. At the time that Mr. Laflin made the sale of this stock the stock ledger showed this account in the name of Jas. H. Britton, trustee for the bank?

A. Yes, sir.

Q. How long prior thereto was this account carried on in that way?

A. I think June, 1872, was the date I testified to.

Q. Do you know anything of your own knowledge of the Comptroller of Currency giving any authority to the board of directors or to Colonel Britton to purchase nine hundred & ten shares of stock?

A. No, sir, except we have the record of the reduction having been approved by the Comptroller of Currency.

Q. Was this sale of Mr. Laflin's made subsequent or prior to that reduction?

A. Subsequent.

Q. Then, so far as your own knowledge is concerned, you don't know that he has ever taken any action in regard to the stock bought
47 by the bank subsequent to that time?

A. I do not know.

Q. You spoke of some stock having been transferred to Mr. Samuel and Mr. Chouteau; did that belong to the bank the time the transfer was made? or you may state whether or not the bank held more stock then, when these transfers were made, than they had taken for old and past-due debts.

A. It would be difficult for me to say that without referring. My impression is that the of the stock which we had taken for old and past-due debts was included in the reduction of the capital in the year 1876. That is my impression, and I cannot call to mind what stocks were taken for bad debts since that date.

Q. Do your books show?

A. I do not know that I could——

Q. Then the s ocks to Jas. H. Britton, trustee, included the stocks that were taken by the bank as security or payment for debts as well as the stocks that were bought with the funds of the bank by Mr. Britton?

A. They all went into the same account.

Q. Have you got Mr. Laflin's private account with this bank?

A. Yes, sir.

Q. Can you refer to it?

A. Yes, sir (referring to book). Here is his private account.

Q. Please state when he made his last deposit in this bank.

A. The last credit is the 5th day of May, 1877.

Q. The 5th day of May?
A. To his individual account.
Q. What was the amount to his credit at that time?
A. Fifth of May?
Q. Yes, sir.
A. On the 5th of May—on the morning of the 5th of May—he had a balance of eighty-seven cents. He then made a deposit of $979.11, which was drawn out on the 8th.
Q. Eighth of what?
A. Of May.
Q. What year?
A. 1877.
Q. What balance stood to his credit on the books of the bank on the 8th day of May, 1877?
A. Eighty-seven cents, after the payment of his check.
48 Q. How long did that balance continue to his credit?
A. The 87 cents—up to the time of the suspension.
Q. On the 16th day of May, 1867, what amount stood to the credit of of S. H. Laflin?
A. 87 cents.
Q. What was the amount that stood to the credit of S. H. Laflin as resident director on the 16th day of May, 1877?
A. $458.25.
Q. Were there any deposits made by Mr. Laflin on his individual account after the 5th day of May, 1877?
A. No, sir.
Q. You spoke of an account in regard to the stock purchased by the funds of the bank as being carried in the books, April 27, 1876: "Barton Bates' account number 2," which was afterwards consolidated with the account of Jas. H. Britton, trustee; please state why that account was termed "Barton Bates' account number 2."
A. For convenience; I do not know any other reason why it was carried in that name.
Q. In those transactions embraced in the account, "Barton Bates' number 2," did the sundry stocks account of the bank show that those purchases had been made for the bank, as in case of Jas. H. Britton, trustee?
A. Yes, sir.
Q. Then the designation of the account was simply a name for the account in order to enable you to carry it under your system of book-keeping?
A. Yes, sir.
Q. You stated that Colonel Britton voted the stock held as trustee for the bank; do you know when?
A. I say I presume he voted it; without reference to the poll-book I do not know that.
Q. You don't know that positively?
A. No, sir.
Q. Do you know whether this stock was voted by him more than once?
A. I do not know. I think there was no election after 1872 until the one in 1877.
Q. Were any other transactions embraced in the account, Jas. H. Britton, trustee for the bank, except the transactions in the stock of the bank?
A. No, sir.

Recross-examination by A. W. SLAYBACK:

49 Q. Please refer to the poll-book and let us see about that vote.

A. (Witness referring to poll-book.) Yes, sir; it is voted. James H. Britton, trustee, has voted 4,449 shares.

Q. What was the date?

A. The 29th of May, 1877.

Q. Please state what book you are reading from.

A. The "poll-book," folio 46, election May 29th, 1877.

Q. How many votes did you say?

A. Jas. H. Britton, trustee, 4,449.

Q. Did that 4,449 include the 85 shares sold by Mr. Laflin?

A. Yes, sir.

Q. You have stated something of a transfer made of the account "Barton Bates, number 2," to Jas. H. Britton, trustee; does your stock-book, your transfer stock book, show that transaction?

A. Yes, sir.

Q. What page do you read from?

A. No page at all; it is a chronological book.

Q. What date?

A. The 27th of April, 1876.

Q. Please read that entry.

A. "For value received, I, Barton Bates, hereby assign and transfer to Jas. H. Britton, trustee, eighteen hundred & forty-nine shares of the capital stock of the National Bank of the State of Missouri, on which one hundred & eighty-four thousand & nine hundred dollars have been paid. In testimony whereof I hereunto set my hand the 27th day of April, 1876. Barton Bates, number 2."

Q. Is that Barton Bates' signature?

A. Yes, sir.

Q. He was director of the bank at that time?

A. Yes, sir.

Q. Will you please read the next entry?

A. "For value received, we hereby declare canceled (9,103) nine thousand one hundred and three shares in the capital stock of the National Bank of the State of Missouri, on which nine hundred & ten thousand & three hundred dollars has been paid, as per order of the board of directors of this date. In testimony whereof we have hereunto set our hands the 27th day of April, 1876. Jas. H. Britton, president; witness Edward P. Curtis, cashier."

50 Q. Were the 1,849 shares of the capital stock which you have just read, the transfer from "Barton Bates number 2," included in the cancellation that was made in the next entry in this transfer book?

A. They were.

Redirect examination:

Q. How before the election of May 29, 1879, was it since there had been an election of the board of directors in this bank?

A. 31 January, 1872.

Q. Was Mr. Laflin a stockholder in this bank from the time of the last election, to wit, Jan'y 31, 1872, up to May the 16th, 1877?

A. Yes, sir.

Q. What was the capital stock of this bank prior to the reduction to two million five hundred thousand dollars?

A. Three million four hundred & ten thousand three hundred dollars.

Q. This stock was reduced by a vote of the stockholders, I understood you to say?
A. Yes, sir.
Q. How many votes were cast for that reduction?
A. The record shows 27,034 votes cast.
Q. Did that number include the 9,103 shares held by Colonel Britton?
A. As trustee?
Q. As trustee.
A. Yes, sir.
Q. Did he vote those shares for that reduction?
A. Yes, sir.

Recross-examination:

Q. When did he do that?
A. April 27th, 1876.
Q. Did he do that after Barton Bates number 2 had transferred the 1,849 shares to him?
A. Yes, sir.
Q. Then he already held before that 9,103, and Barton Bates № 2 held the other part?
A. No; they were all consolidated before the vote was made. They were consolidated the same day.
Q. That same day?
A. Yes, sir.
Q. Prior to that time some of the stock stood in the name of Barton Bates № 2?
A. Yes, sir.
Q. And James H. Britton, trustee?
A. Yes, sir.
51 Q. And on that day Barton Bates number 2 transferred in the transfer which you have read from the transfer book the 1,849 shares?
A. Yes, sir.
Q. Then the 1,849 shares added to what Jas. H. Britton, trustee, previously held made the amount 9,103?
A. 9,103.
Q. And those 9,103 shares were then voted by Jas. H. Britton, trustee?
A. Yes, sir.
Q. As if he had been owner & holder?
A. Voted by him, that is all.
Q. Was that vote taken after the purchases had been made, that you have spoken of or before they were made?
A. The vote.
Q. Yes.
A. The votes came in. The circular was sent out the 31st of December, 1875, and the votes came in the written ballots, from time to time by mail up to the day when the board declared the vote had been held, which was the 27th of April.
Q. 1876?
A. 1876. They came in from time to time.
Q. From the stockholders?
A. Yes, sir; there was no meeting of the stockholders.
Q. Have you got a copy of the circular that you sent out to the stockholders that voted?
A. Yes, sir.
Q. I would like to have it.
A. Here it is.

(Witness produced circular letter to stockholders, dated St. Louis, December 31st, 1875, hereto attached, marked Exhibit I.)

Q. Mr. Curtis, will you please turn to your transfer book of June 30th, 1868?

A. Yes, sir.

Q. And read that entry, if you please.

A. "For value received, I, Barton Bates, hereby assign & transfer to Barton Bates number 2, thirteen hundred & sixty-two shares of the capital stock of the Bank of the State of Missouri, on which one hundred and thirty-two thousand six hundred dollars have been paid. In testimony whereof I hereunto set my hand the 30th day of June, 1868. Barton Bates. Witness, William A. Ross."

52 Q. What is the number of shares that Barton Bates sells to Barton Bates number 2?

A. 1,362 shares.

Q. Do you know what he sold that at?

A. I do not know.

Q. I would like to know.

A. I suppose I can find out. Cost 95.25 per share, about. The 1,849 shares were taken by the bank in their account & debited to "sundry stocks," 8th of August, 1874.

Q. W*as* was the price paid?

A. One hundred & seventy-six thousand one hundred & twenty-three dollars and ten cents.

Q. What was the date?

A. August 8th, 1874.

Q. What does this entry mean? You read now from page 32 of the general ledger, under the head of "sundry stocks." On that entry of August 8th, 1874, "1,849 shares of stock in the National Bank of the State of Missouri, $176,123.10," I find written in pencil marks along in that entry, and still legible, "not transferred." What does that mean?

A. It means it was not transferred to the account of Jas. H. Britton, trustee; it stood in the name of "Barton Bates account ℔ 2," up to the date of the cancellation of the stock; then it was all consolidated into one account. It stood in the account of Barton Bates number 2.

Q. You have gotten a little further along in point of time. I ask you what did Barton Bates get for that stock that he sold the 30th day of June, 1868, and which that transfer-book shows was sold from Barton Bates to Barton Bates number 2? What did Barton Bates get for these 1,362 shares?

A. That was included in that sale of the 1,849 shares on the 8th of August, 1874.

Q. But this transfer from Barton Bates to Barton Bates ℔ 2 is dated June 30th, 1868?

A. Yes, sir.

Q. What did he get for it then?

A. He sold it to himself. It is his account ℔ 2.

Q. But what did he get for it?

A. I do not know. The bank had nothing to do with it until August, 1874. He transferred it on the books, of the stock book. This is not a money transaction.

53 Q. Then, were you acting as cashier 30th day of June, 1868, of this bank?

A. Yes, sir.

Q. How would it come, then, if Barton Bates ℔ 2 had an account with this bank, and you, the cashier of this bank, and Barton Bates, at that

time one of the directors, and he transfers from Barton Bates—buys of himself—to this bank, under the name of Barton Bates № 2, 1,362 of this bank's own stock, and you not know what the bank paid?

A. The bank didn't pay anything at the time. They had nothing to do with it at that time. He transferred to himself. It was his own arrangement. The stock stood in his own name, and he had a right to transfer that money from his private account to his account № 2. The bank knew nothing about it. There was no money paid by the bank at that transaction at all.

Q. If the bank became the owner when it was transferred to Barton Bates № 2, why wasn't the bank interested in it?

A. The bank didn't become the owner until they paid for it, August, 1874.

Q. Then the 1,362 shares were held by Barton Bates № 2 from the 30th day of June, 1868, until August, 1874, without the bank being the owner of the shares thus held in the name of Barton Bates № 2?

A. Yes, sir.

Q. When the bank did take it to its own account, August 8th, 1874, the bank paid Barton Bates at that time $176,123.10, which you say is about the rate of——?

A. About 95.25 per share.

Q. Do you know how Barton Bates originally came by these 1,362 shares?

A. He bought it up.

Q. Individually?

A. Individually.

Q. It was, then, individual stock until the bank took it, in August, 1874?

A. Yes, sir.

Q. And so held by him?

A. And so held by him.

Q. And so recognized by the bank?

A. Yes, sir.

54 Q. Notwithstanding the fact that the account of Barton Bates № 2 held these 1,326 shares from June 30th, 1868, up to August, 1874?

A. Yes, sir.

Q. Mr. Curtis, on page 23 of your book known as the "stock ledger," I find, under the head "Barton Bates, December 20th, 1875," what purports to be a sale of forty-one shares, forty-one hundred dollars, to Jas. H. Britton, trustee; do you see that entry?

A. Yes, sir.

Q. And on the same page, on the lower part of the page, under the separate account, designated as "Barton Bates № 2," I find an entry of June 24th, 1868, showing that Barton Bates № 2 bought of James H. Britton, trustee, eleven shares, eleven hundred dollars; do you see that now?

A. Yes, sir.

Q. On the same page, under date January 15th, 1868, there is an entry, "B. Bates № 2, twenty shares, two thousand dollars," which purports to be a purchase by Barton Bates from Barton Bates № 2; you see that entry?

A. Yes, sir.

Q. On page 31 of the same book, I find, under date of June 1st, 1872, a purchase by Barton Bates № 2 of 504 shares, at $50,400; you see that entry?

A. Yes, sir.

Q. Bringing these 504 shares from Jas. H. Britton, trustee, on the same page, under date of March 31st, 1875, under the account headed Barton Bates ⅌ 2, I find an entry, "Jas. H. Britton, trustee, eighty shares, eight thousand dollars"—see that?

A. Yes, sir.

Q. And immediately under that, "April 27th, 1876, ditto, 1,849 shares, $184,900, these two last entries purporting to be sales by Barton Bates ⅌ 2 to James H. Britton, trustee; and on the same page, I find, October 12th, 1872, Barton Bates to Jas. H. Britton, trustee, 178 shares, $17,800; you see that?

A. Yes, sir.

Q. And immediately under that, April 8th, 1873, "Eads, James B., account ⅌ 2, 143 shares, $14,300," showing that Barton Bates ⅌ 2 sold to James B. Eads 143 shares—see that?

A. Yes, sir.

A. And on same page, under date November 19th, 1873, what purports to be a sale from James B. Eads to Barton Bates ⅌ 2
55 of 115 shares, $11,500; you see that entry?

Yes, sir.

Q. And August 26, 1874, on same page, James B. Eads, to 143 shares, and right under it, April 26, 1875, James B. Eads, without ⅌ 2 put to it, 80 shares; you see that entry?

A. Yes, sir.

Q. Can you explain these entries?

A. No, sir.

Q. That is all.

(Counsellor Shields objects to last question, on the ground of irrelevancy and immateriality.)

WITNESS. I want to qualify my "No, sir." I am able to explain this, however: That the transfer of stock doesn't necessarily involve any money transactions in which the bank has any connection. Those parties might transfer stock backward and forward without the bank knowing anything about it. It was a transfer of stock simply. I do not know, without taking each particular transaction and going through it, whether the bank had anything to do with it.

Q. I will now ask you to explain how it was that you swore yesterday that the account designated as Barton Bates ⅌ 2 signified the ownership of this bank of all stocks held in that name.

A. It did, up to the date the bank made the transfer. I had forgotten the time the bank paid money for it.

Q. You said that what shares the bank owned were owned in the name of Barton Bates ⅌ 2, until the designation of the account, for the convenience of your bookkeepers, was changed to James H. Britton, trustee

A. No. I said all the stock owned by the bank stood in those two accounts—Barton Bates ⅌ 2 and James H. Britton, trustee.

Q. These entries show that Barton Bates ⅌ 2 bought & sold with Barton Bates individually, with James B. Eads, and with James B. Eads ⅌ 2; also with Edward P. Curtis—that is for one share there—with James H. Britton, trustee, and also James H. Britton. Now, how do
56 you explain this multitude of transactions—buying and selling—backwards and forwards with that account, if you say it belonged to the bank?

A. I find now, by reference, that the bank had no interest in the purchase of that stock, the 1,849 shares, until the year of 1,874. When the stock was purchased before that, it went in the account of the trustee;

it must have gone in the name of Britton, trustee. There is one purchase from Barton Bates' account ℔ 2 of 1,849 shares. Prior to that date the stock standing in the ledger in the name of Barton Bates ℔ 2, the bank had no interest in. In 1874 the bank became the possessor of the stock by paying the money to Barton Bates for it.

Q. They paid him 95¼ for it?

A. About that.

Q. You don't know what it cost him?

A. I presume that is what it cost him. I don't know anything about it.

Q. Do you know?

A. I don't know anything about it.

Q. Isn't it a fact that Barton Bates was buying & selling & speculating in the stock of this bank all the time on his own individual account?

A. I don't know; the books don't show that.

Q. Don't they show that?

A. No, sir.

Q. They show transfers?

A. That large amount might be the resulting cost; doubtless is the cost of the 1,849 shares.

Q. What do those little entries in pencil mark mean, in this book, page 31; these figures 859, 935?

A. They are the footing up of the preceding figures.

Q. On the same page opposite the name of Eads ℔ 2, 1,769, 2,561, 2,704?

A. They are the pencil footings.

Q. Why do you have an account "James B. Eads," dated November 19th, 1873, and August 16th, 1874, James B. Eads ℔ 2?

A. That was the way of keeping the account.

Q. Was there a distinction between Jas. B. Eads & Jas. B. Eads ℔ 2?

A. Yes, sir.

57 Q. What was the significance of that?

A. I do not know. That was the way they kept their stock.

Q. I will ask you this question. Your ledger shows other parties had accounts with this bank as trustees and curators; here is Henry Hitchcock, trustee, and it don't say who he was acting for.

A. No, sir. I knew what Barton Bates ℔ 2 meant.

Q. You stated—I understood you to state yesterday, that he held all the stock of this bank under that name?

A. No; I didn't state that. I said all the stock the bank held was in those two accounts. I did not know exactly the date on which the bank acquired a possessory interest in them.

Q. You were mistaken about that yesterday?

A. I was not mistaken at all.

Q. I ask you the question, whether you were not mistaken? Whether you were or not will be decided.

A. I think your question was, under what name this stock belonged to the bank.

Q. We won't discuss that now. I think one way, of the testimony, and you think another. My question is, if you were mistaken in your answers yesterday about that account of Barton Bates ℔ 2, may you not also be mistaken as to the ownership of the shares of stock entered in the name of Jas. H. Britton, trustee?

A. No, sir; I may not be. I speak positively when I speak, because the account, "sundry stocks," shows the possessory interest in this stock was held in those two different names.

Q. But didn't you know that this bank couldn't acquire itle to its own stock by law?

A. There are exceptions to that rule.

Redirect examination:

Q. Did you necessarily know of the transfer of stock on the books of the bank?

A. No, sir.

Q. Your duties as cashier simply were confined to the money transactions of the bank?

A. And the issuance of stock, when certificates were issued, if they were called for, I had to sign them.

58 Q. I understood you to say that the reason that you know that those stocks standing on the books of the bank in the name of Jas. H. Britton, trustee, were owned by the bank was because it involved an expenditure of the money of the bank?

A. That is the reason.

Q. Charged to the sundry stocks account of the bank?

A. Yes, sir.

Q. Can you now state how Barton Bates was paid by the bank for that stock in 1874?

A. By the cancellation of his individual notes which the bank held.

Q. On which they advanced money?

A. On which they advanced money.

Recross-examination:

Q. Did he owe the bank?

A. Yes, sir.

Q. More than his stock?

A. He must have owed it more, for those notes were paid by the value of the stock.

Q. Don't you know that as a director, he had no right to be in debt to this bank that much?

A. I know he had a right to be in debt that much.

Q. Do you know what was the market value of the stock of this bank in August, 1874?

A. I do not.

Q. Do you know what it was worth June 30th, 1868?

A. I have no recollection. I paid 95 or 96 for it about that time.

Q. Was the purpose and intention of the managers of the bank, when they gave what you call office checks to Colonel Britton to reimburse his individual account, out of which he purchased that stock of Mr. Laflin, and that the stock of Mr. Laflin was ultimately to be cancelled?

A. My impression is that was the design.

Q. I will ask you another question, between the year of 1868 and the year of 1874, did this bank at any time pay any dividend on its stock?

A. Yes, sir.

Q. Did Barton Bates collect dividends on that stock which stood in the name of Barton Bates #2?

A. Yes, sir.

Q. That went to his individual account?

A. Yes, sir.

Q. Who collected the dividends on the stock that was held by

59 James H. Britton, trustee?

A. The bank.

Q. Wasn't it first entered to Col. Britton's individual account?

A. No, sir.

Q. The bank collected it itself?
A. Yes, sir.
Q. All of it?
A. Yes, sir.
Q. Have you got any entries showing that in your books?
A. Yes, sir.
Q. Please point me to the entry of the payment of the last dividend to the account of Jas. H. Britton, trustee.
A. Dividend book B, folio 1, July 10th, 1876. It was titled dividend № 19. Seven shares standing in the name of Jas. H. Britron, trustee, dividend $24.50, which was receipted for 8th July, 1876, and credited on profit & loss book of 1876, same date, "Received, James H. Britton, trustee, $24.50."
Q. That was the last dividend declared by the bank?
A. Yes, sir.
Q. On only seven shares?
A. Yes, sir; all stood in the name of the bank that day.
Q. No dividend declared since?
A. No, sir.

Redirect examination:

Q. You say "profit & loss book," do you mean profit & loss book of the bank?
A. Yes, sir.
Q. Shows that the bank got the benefit of this dividend?
A. Yes, sir.
Q. What became of the other stock held by Jas. H. Britton, trustee?
A. Cancelled on the 27th of April, 1876.

60 EXHIBIT A.

No. [1969 erased with ink; 33 inserted.] 54 shares.

NATIONAL BANK OF THE STATE OF MISSOURI IN ST. LOUIS.

Capital, [erased with ink, $3,410,300; inserted with ink, $2,800,000.]

This certifies that S. H. Laflin is entitled to fifty-four shares in the capital stock of the National Bank in the State of Missouri in St. Louis, transferable only on the books of the said bank in person or by attorney on the return of this certificate and in conformity with the provisions of the law of Congress and the by-laws which may be in force at time of such transfer.

St. Louis, Mo., Dec. 5th, 1866.

[SEAL.] (Signed) J. H. BRITTON,
President.

(Signed) EDW'D P. CURTIS,
Cashier.

[25-c't revenue stamp.]

(On the margin:) Shares $100 each.

61 For value received do hereby sell, assign and transfer to shares of one hundred dollars each of the common capital stock of the National Bank of the State of Missouri in St. Louis, standing in name on the books on said bank, and represented by

the within certificate, and do hereby irrevocably constitute and appoint E. Gerault attorney in fact to transfer the said stock on the books of said bank in such form and manner as may be necessary or required by the regulations of said bank in that behalf in the premises.

Witness hand this day of , 18 .

SYLVESTER H. LAFLIN.

In presence of—
A. S. ACKENSON.

62 EXHIBIT B.

No. [1968 erased wiih ink; 918 inserted.] 10 shares.

NATIONAL BANK OF THE STATE OF MISSOURI IN ST. LOUIS.

Capital, [$3,410,300 erased with ink; $2,500,000 inserted with ink, and afterward erased.]

This certifies that S. H. Laflin is entitled to ten shares in the capital stock of the National Bank of the State of Missouri in St. Louis, transferable only on the books of the said bank in person or by atttorney on the return of this certificate and in conformity with the provisions of the law of Congress and the by-laws which may be in force at time of such transfer.

St. Louis, Mo., January 15th, 1868.

[SEAL.] J. H. BRITTON,
President.

EDW'D P. CURTIS,
Cashier.

[25-cent revenue stamp.]

(On the margin:) Shares $100 each.

63 For value received do hereby sell, assign and transfer to shares of one hundred dollars each of the common capital stock of the National Bank of the State of Missouri in St. Louis, standing in [erased: my] name on the books of said bank, and represented by the within certificate, and do hereby irrevocably constitute and appoint [erased: E. Gerault] attorney in fact to transfer the said stock on the books of said bank in such form and manner as may be necessary or required by the regulations of said bank in that behalf in the premises.

Witness hand this [erased: 6th] day of [erased: July, 1876.]

[Erased: SYLVESTER H. LAFLIN.]

In presence of—
[Erased: A. S. ACKENSON.]

For value received I, , do hereby sell, assign & transfer to shares of one hundred dollars each of the common capital stock of the National Bank of the State of Missouri in St. Louis, standing in name on the books of said bank, & represented by the within certificate, & do hereby irrevocably constitute & appoint E. Gerault attorney in fact to transfer the said stock on the books of said bank in such form & manner as may be necessary or required by the regulations of said bank in that behalf in the premises.

Witness hand this day of 187 .

SYLVESTER H. LAFLIN.

In presence of—
A. S. ACKERSON.

64 EXHIBIT C.

No. [1967 erased with ink; 1669 inserted.] 11 shares.

NATIONAL BANK OF THE STATE OF MISSOURI IN ST. LOUIS.

Capital, [$3,410,300 erased with ink; $2,500,000 inserted with ink, and afterward erased.]

This certifies that S. H. Laflin is entitled to eleven shares in the capital stock of the National Bank of the State of Missouri in St. Louis, transferable only on the books of the said bank in person or by attorney on the return of this certificate and in conformity with the provisions of the law of Congress and the by-laws which may be in force at time of such transfer.

St. Louis, Mo., July 28, 1873.

[SEAL.] J. H. BRITTON,
President.

EDW'D P. CURTIS,
Cashier.

(On the margin:) Shares $100 each.

65 For value received do hereby sell, assign and transfer to shares of one hundred dollars each of the common capital stock of the National Bank of the State of Missouri in St. Louis, standing in name on the books of said bank, and represented by the within certificate, and do hereby irrevocably constitute and appoint E. Gerault attorney in fact to transfer the said stock on the books of said bank in such form and manner as may be necessary or required by the regulations of said bank in that behalf in the premises.

Witness hand this day of , 18 .

SYLVESTER H. LAFLIN.

In presence of—
A. S. ACKENSON.

66 EXHIBIT D.

No. [1966 erased with ink; 1571 inserted.] 5 shares.

NATIONAL BANK OF THE STATE OF MISSOURI IN ST. LOUIS.

Capital, [erased with ink, $3,410,300; inserted with ink, $2,500,000.]

This certifies that S. H. Laflin is entitled to five shares in the capital stock of the National Bank of the State of Missouri in St. Louis, transferable only on the books of the said bank in person or by attorney on the return of this certificate and in conformity with the provisions of the law of Congress and the by-laws which may be in force at time of such transfer.

St. Louis, Mo., Sept. 10th, 1872.

[SEAL.] J. H. BRITTON,
President.

EDW'D P. CURTIS,
Cashier.

[25-cents revenue stamp.]

(On the margin:) Shares $100 each.

67 For value received do hereby sell, assign and transfer to shares of one hundred dollars each of the common capital stock of the National Bank of the State of Missouri in St. Louis, standing in name on the books of said bank, and represented by the within certificate, and do hereby irrevocably constitute and appoint E. Gerault attorney in fact to transfer the said stock on the books of said bank in such form and manner as may be necessary or required by the regulations of said bank in that behalf in the premises.

Witness hand this day of , 18 .

SYLVESTER H. LAFLIN.

In presence of—
A. S. ACKENSON.

68 EXHIBIT E.

No. [1965 erased with ink; 1937 inserted.] 5 shares.

NATIONAL BANK OF THE STATE OF MISSOURI IN ST. LOUIS.

Capital, [erased with ink, $3,410,300; inserted with ink, $2,500,000.]

This certifies that S. H. Laflin is entitled to five shares in the capital stock of the National Bank of the State of Missouri in St. Louis, transferable only on the books of the said bank in person or by attorney on the return of this certificate and in conformity with the provisions of the law of Congress and the by-laws which may be in force at time of such transfer.

St. Louis, Mo., Dec. 15th, 1876.

[SEAL.] J. H. BRITTON,
President.

EDW'D P. CURTIS,
Cashier.

(On the margin:) Shares $100 each.

69 For value received do hereby sell, assign and transfer to shares of one hundred dollars each of the common capital stock of the National Bank of the State of Missouri in St. Louis, standing in name on the books of said bank, and represented by the within certificate, and do hereby irrevocably constitute and appoint E. Gerault attorney in fact to transfer the said stock on the books of said bank in such form and manner as may be necessary or required by the regulations of said bank in that behalf in the premises.

Witness hand this day of , 18 .

SYLVESTER H. LAFLIN.

In presence of—
A. S. ACKENSON.

70 EXHIBIT F.

No. 743.] SAINT LOUIS, *May 16th*, 1877.

National Bank of the State of Missouri in St. Louis, pay to the order of P. F. Kelleher & Co., five thousand & thirty-seven $\frac{50}{100}$ dollars in current funds.

(Signed) J. H. BRITTON.

$5,037.50.

[5-ct. stamp.]

(Endorsed:) P. F. Kellerher & Co.

70½ EXHIBIT G.

ST. LOUIS, *May* 16, 1877.

National Bank of the State of Missouri in St. Louis, credit J. H. Britton 40 sh's stock N. B. St Mo., @ 59 2,360

Debit sundry stocks.

70¾ EXHIBIT H.

ST. LOUIS, *May* 16, 1877.

National Bank of the State of Missouri in St. Louis, credit J. H. Britton 43 shs. stock N. B. S. Mo., @ 59 50/100 ..... 2,677 50

Debit sundry stocks.

71 EXHIBIT I.

JAS. H. BRITTON, President; BARTON BATES, Vice-President; EDW. P. CURTIS, Cashier.

NATIONAL BANK OF THE STATE OF MISSOURI IN ST. LOUIS.

Capital, $3,410,300. Established 1837.

Circular letter to shareholders.

ST. LOUIS, *December* 31*st*, 1875.

At a meeting of the board of directors held on the 23rd inst., it was resolved—

"That the board deem it expedient to reduce the capital stock of this bank to the sum of two million five hundred thousand dollars, and that in order to obtain a full vote of the shareholders, a circular letter be sent to each shareholder requesting his vote on the proposition."

The board is induced to make this proposition for several reasons.

1st. A large amount would be saved in the matter of taxation. The importance of this saving is just now very manifest, when because of the dullness of business the profits of banking are much reduced, whilst the burdens imposed upon the business have been increased.

2nd. It is thought that very nearly as much business can be done with the reduced capital as with the present amount; and

3rd. The amount of stock needed to be bought and cancelled to effect the reduction can be obtained at rates less than par, and the difference between the rate of which it may be bought and the par value will constitute an apparent profit to the bank and through it to the shareholders.

The reduction cannot be made unless two-thirds of the stock is voted in favor of it. (Every share which is not voted counts as a vote against the proposition.)

Please sign the inclosed ballot, filling the blank so as to show your vote for or against the proposition, and return it to me promptly.

The board has deemed it inexpedient at this time to declare the usual semi-annual dividend.

Yours, respectfully,

EDWD P. CURTIS,
Cashier.

Ryder v. Alton R. Co., 13 Ill. 516.

How could Keleher, or Girault, or even Laflin himself know whether Britton was buying for himself or for a pool representing himself and others, or for some parties aspiring to be directors at the election about to take place, and at which it is proved he did in point of fact cast a vote of every share held by him as trustee and as an individual on the transfer-book. [Page 35 transcript of record.]

Here the case it appeared should rest. The receiver, so far as he represents the bank, has no greater right to recover against Laflin than the bank itself would have if it were a going concern. So far as he represents creditors of the bank, they can not look to Laflin as a contributory, for Laflin ceased to be a stockholder on May 16th, 1877, and the transfer-book gave notice of this to all the world, including creditors. And they can not look to him unless they charge him with actual fraud, and support the charge by affirmative testimony. The eminent judge who tried this case found as a fact that Laflin acted in good faith throughout the entire transaction, and decided as a conclusion of law that a shareholder in a national bank, while it is a going concern, has the absolute right in the absence of fraud to make a *bona fide* and actual sale and transfer of his shares at any time to any person capable in law of purchasing and holding the same, and of assuming the transferrer's liabilities in respect thereto, and that this right is not in such cases subject to the control of the directors or other stockholders. And the learned court further found as a fact that on May the 16th, 1877, the date of the sale by Laflin, James H. Britton, or James H. Britton, trustee, was such a person. As the facts so found by the court are amply sustained by the record, the palpable justice of the conclusions reached seems so conclusive, and is so demonstrated in the masterly language of the finding itself, that further comment by counsel would appear audacious.

A. W. SLAYBACK,
Counsel for Respondent.

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2nd. It is thought that very nearly as much business can be done with the reduced capital as with the present amount; and

3rd. The amount of stock needed to be bought and cancelled to effect the reduction can be obtained at rates less than par, and the difference between the rate of which it may be bought and the par value will constitute an apparent profit to the bank and through it to the shareholders.

The reduction cannot be made unless two-thirds of the stock is voted in favor of it. (Every share which is not voted counts as a vote against the proposition.)

Please sign the inclosed ballot, filling the blank so as to show your vote for or against the proposition, and return it to me promptly.

The board has deemed it inexpedient at this time to declare the usual semi-annual dividend.

Yours, respectfully,

EDW'D P. CURTIS,
Cashier.

In Rosevelt vs. Brown, 11 N. Y. 148, Edwards, J., delivering the opinion of the Court, says on page 152:

> "A corporation, although it is an artificial existence, must be composed of natural persons who manage and administer its affairs and receive its benefits. These persons are not generally named in the charter of incorporation, and there must be some way of ascertain who they are. In a joint stock company they are, and they necessarily must be, those who hold the evidence that they are the owners of the stock; they are called the stockholders and not the stock owners, and they are generally those who appear on the transfer books of the company to be stockholders. This must be so in the case of corporations which are subject to the provisions of the revised statutes (1 R. S. 604, Sec. 8). As between himself and third parties, the person who appears upon the transfer books to be a stockholder, may have parted with all his interest in the stock, but as between himself and the corporation, such person, and he only, is treated as a stockholder."

Nuckolls vs. Merry, L. R. H. of L. p. 530. This was a suit by a seller of stock against his broker for the value of stock, which was sold by his broker to a stock jobber, who sold it again and in a similar way it passed through several hands, and the jobber, without fraud, received from his purchaser, and passed on to complainants broker, the name of a minor, legally incapable of accepting the shares, to whom the seller executed a transfer; but the transfer was never registered. Afterwards the company was wound up, and the original holder required to pay subsequent calls.

It was held: That the jobber was liable to make good to plaintiff the calls which he had been compelled to pay on the minor's default.

Lord Chelmsford says on page 544:

> "The jobber does not fulfill his contract by merely giving to the selling broker any name, as the purchaser of the shares, but only by giving the name of a person who is of ability to contract, and who has consented to become a purchaser. In other words, the jobber is bound to furnish the seller with the means to execute a transfer of the shares to a nominee, against whom the obligation to take such transfers can be enforced, and thereby the seller be relieved from all liability with respect to his shares, and until he has done so, the jobber has not performed his contract.

In Symons case, L. R. 5 Ch. App. Cases 298, speaking of the transfer of stock, Giffard, L. J., says:

> "The principle is as simple as possible, to wit: That a man who executes a transfer of shares remains liable, unless and until there is on the list a transferee, who is legally liable to the company; and you take for the purpose of ascertaining whether the transferor has or has not provided such a transferee, the date of

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Please sign the inclosed ballot, filling the blank so as to show your vote for or against the proposition, and return it to me promptly.

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Yours, respectfully,

EDW'D P. CURTIS,
Cashier.

72 PATRICK F. KELEHER, sworn on the part of plaintiff, testified as follows, to wit:

Q. What is your business?

A. I am a broker.

Q. How long have you been engaged in that business?

A. I have been engaged in it for myself since 1871; commenced January, 1871.

Q. In what city are you engaged in that business?

A. In the city of St. Louis.

A. Where is your place of business?

A. It is now ※ 305 Olive.

Q. Where was it May 16th, 1877?

A. It was 307 N. 3rd street.

Q. Your firm is generally known throughout the city as brokers, dealers in bonds and stocks?

A. Yes, sir.

Q. Do you know Sylvester H. Laflin?

A. Yes, sir.

Q. How long have you known him?

A. I have known him, perhaps, ten years.

Q. Did you ever have any business transactions with him prior to the 16th day of May, 1877?

A. Yes, sir.

Q. What was the nature of that business, please?

A. I think I sold him some Pilot Knob stock at one time, in 1872 or 1873.

Q. Did you have any transaction with him on the 16th day of May, 1877, in reference to some stock of the National Bank of the State of Missouri?

A. Yes, sir.

Q. Please state what first took place between you in reference to that matter, when and where it took place?

A. I met Mr. Laflin as I was coming from the St. Louis National Bank. He was going up the steps and I was coming down.

Q. When was that?

A. On the 16th of May, 1877. He asked me what State bank stock was worth; I believe I said that the last sale was fifty-nine and three-quarters. He hesitated awhile, and then asked me what I could get for ten shares, it may have been 25 shares; I am not positive about that; I told him I thought I might be able to get 59 or 58½; from 58½ to 59, at the same time quoting to him the last sale I had heard of. He

73 then called me aside and said that he had some stock that he wanted to dispose of; I believe I stated to him then that it would be better to sell the stock in lots; I did not know at the time how many shares he had; I think I asked him, but he didn't tell me; I then said perhaps it would be better to sell in lots. He then said I might sell 25 shares. He told me then the number of shares he had, and said he would sell it altogether, but that was all that occurred in that transaction, except that it was agreed to sell in lots.

Q. Did he in that conversation give any reason why he wanted to sell his stock?

A. No, sir; he gave me the limit to sell the stock at the time.

Q. What was it?

A. My impression is the limit was 58½—58 or 58½.

Q. Was that on the whole of the stock?

A. Yes, sir.

Q. How many shares?
A. Eighty-five. He then said Mr. Smith, of Chicago, had some and if I would make a good sale for him he would get me Mr. Smith's stock also to sell.
Q. What did you then do; did he deliver the certificates to you?
A. I think I sent a note to Colonel Britton within thirty minutes from that time. My idea is I offered him thirty-five shares first of the stock, but I see the sale is made of forty-five, and it is quite possible I offered him ten more after that. I offered him the stock, I think, at sixty cents. Colonel Britton put down in pencil 59½, and I accepted. I then notified Mr. Laflin of the sale of the stock, stating what we had received, and asking him please to send the certificate. We then sold the forty shares within a short time after that—within one lot.
Q. You sold first 45 shares at 59½ and then notified Mr. Laflin of that?
A. Yes, sir; merely a little memorandum written with a pencil.
Q. Did he then deliver the certificates of stock to you?
A. No, sir.
Q. When did he deliver the certificates to you?

74 A. The transaction was not entirely complete. That 45 shares was complete, except the mere delivery, but there was forty shares left, and my impression is he had one certificate. At any rate we sold the forty shares within few minutes afterwards at 59, Colonel Britton giving the price in pencil-mark.
Q. Examine those certificates and see whether you recollect whether they are the certificates delivered to you by Mr. Laflin.
A. I am positive—I know that this is one of the certificates, because my partner's handwriting is on it. I think this (indicating another) is, sir, but I am not certain.
Q. Here the power of attorney is written out.
A. I think at the time he wrote the power of attorney on the certificates.
Q. Why?
A. In order to make the transfer.
Q. Any reasons given for the erasures in the printed form?
A. No; none at all.
Q. The question I ask, is why was that written out here in the printed certificates?
A. It appears that this was transferred to somebody else. Mr. Laflin had transferred it to somebody else, and then cancelled the power of attorney, and therefore another had to be written out.
Q. That was written out by whom?
A. My partner, William Little.
Q. What did you do with these shares of stock when Mr. Laflin delivered them to you?
A. I instructed one of my clerks to deliver them to Colonel Britton. It is quite possible that the 45 shares may have been delivered first. The checks will show that, I think, and the forty delivered after.
Q. Look at that check, if you please.
A. That is my signature.
(Witness here shown Exhibit F, dated May 16th, 1877, for $5,037.50.)
Q. State whether or not you received that check in payment for this stock.
A. I will have to figure it up. I think I did.
Q. Well, figure it up.
A. Yes, sir; that is the check.

75 Q. What did you sell these two lots of stock for?

A. One for 59, the other 59½. The entire amount of the 85 shares were delivered at one time.

Q. Then the negotiation in regard to this matter had been going several days previous to that?

A. No, sir; the negotiation for the whole stock was made on the same day.

Q. The same day?

A. Yes, sir.

Q. As to all of it?

A. As to the 85 shares of Mr. Laflin. He got the stock of Mr. Smith, several days after.

Q. How long was it after that before you sold Mr. Smith's stock, if at all?

A. It was two or three, or four or five days. Mr. Laflin telegraphed to Chicago.

Q That was a separate transaction from the Laflin transaction?

A. It was separate, but mentioned cotemporaneously. Mr. Laflin said, "If a good sale is made of this, you can get the Smith stock."

Q. After receiving this money, $5,037.50, for the stock of Mr. Laflin, or where did you present that check?

A. The check was presented by one of my clerks at the counter of the State Bank, and the money received.

Q. What did you do with that money?

A. Re-deposited it, I suppose—the checks, or rather kept the money in the office and deposited it at the usual time. I drew a check for Mr. Laflin then for the amount, $5,037.50, less the usual commissions.

Q. Where did you deposit it?

A. At the banking house of Bartholow, Lewis & Co.

Q. You paid Mr. Laflin, how?

A. At the rate of $5,037.50, less the charges.

Q. What were those charges that you deducted?

A. Fifty cents a share.

Q. Is that the usual commission charged for the sale of stock by brokers?

A. Usual for the sale of bank stock.

Q. Do you remember how much money you gave Mr. Laflin
76 a check for?

A. Yes, sir; I think I have a memorandum of it here. I think I gave a check for $4,995.

Q. What would the amount of these 85 shares of stock be at $58.50?

A. Well, I will have to figure it up.

Q. Figure it up.

A. $4,972.50. You must recollect that when Mr. Laflin spoke to me to sell the stock, that at the figures he gave me it was understood and stated between us that the commissions would be charged and deducted from the price he got. If he gave a limit of 58½ on it, the price to him would be 58, and if we could get 59, it would be returned to him less the commissions. That would make the price returned to him somewhat more than the limit.

Q. If in the sale of the stock you received more than he limited it to you, then you accounted to him for more than he limited you to in the sale of the stock?

A. Yes, sir.

Q. Did any conversation take place between you and him in regard to the sale, whether it was a good one or not?

A. Yes, sir; Mr. Laflin spoke in very flattering terms of the sale. He met two or three gentlemen on the street and he mentioned the sale and said, that is the best broker in St. Louis.

Q. That was after the sale?

A. That was after the sale, and he then mentioned the sale.

Q. Do you remember what you sold Mr. Smith's stock at?

A. 59; the limit was less on that.

Q. The limit was less?

A. The limit was less.

Q. Did you account for the surplus?

A. Yes, sir; we fully accounted for the price we received. We returned the price less the charges.

Q. In the transaction the only benefit you received was your commissions—50 cents per share?

A. Yes, sir.

Q. State whether or not in this transaction you purchased the stock as a purchaser for Mr. Laflin, or whether you acted in any other capacity.

77 (Objected to on the ground that it is leading; that it calls for the matter, the opinion of the witness as to legal effect of what he did, and that it is only the province of the witness to state the transaction just as it occurred, and what was said and done at the time, and let the court who tries the case decide as to the legal consequences of the words and acts related by the witness, and because it calls for his mere opinion.)

A. No, sir; it was understood between us. The last words Mr. Laflin said to me on the steps of the St. Louis National Bank, when we were speaking about the sale of his stock, was to get all that I could, but sell it anyhow. That was the last word he said to me. It was understood a commission of fifty cents per share would be charged. I stated it to him.

Q. Then you were acting simply as his agent in the sale of this stock?

(Objected to as leading, and on the same grounds of objections to the last question.)

A. Yes, sir.

Q. Did you know, at the time this sale was made, who bought?

A. Did I know at the time of the sale?

Q. Yes, sir.

A. Yes, sir.

Q. Who?

A. James H. Britton.

Q. Did you know that Jas. H. Britton was president of the National Bank of the State of Missouri?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. Did you know for whom he was purchasing this stock?

A. No, sir; I can say this: Colonel Britton said to me several times—I sold him a good many shares of stock; it may have been in this transaction—no, it could not have been in this transaction, but he said to me——

78 (Objected to witness stating any conversation not connected with transaction.)

Q. Go on.

A. I cannot state any particular transaction, but he stated to me very

often, in asking him to give a better price—he said his party wouldn't pay any more.

Q. You had made other sales of stock to Colonel Britton?

A. Yes, sir.

Q. That same stock prior thereto?

A. Yes, sir.

Q. What knowledge or information did you have as to whether Colonel Britton was purchasing for himself, or whether he was purchasing for another party?

A. None whatever, except those words; that is all, and I cannot state what that transaction was.

Q. Did you have any knowledge or information at any time that the National Bank of the State of Missouri was purchasing this stock through Colonel Britton?

A. No, sir.

Q. Did you have at any time any knowledge or information that the bank was purchasing its own stock?

A. At any time?

(Objected to, because it is irrelevant to the case we are trying. There may have been a hundred such instances, but it does not apply to this particular transaction and ought not to effect Mr. Laflin's rights.)

Q. Yes.

A. I cannot state positively as to that. I know, after the circular was issued, that they had bought a great deal of stock in. Previous to that we had sold a great deal of stock to Colonel Britton.

Q How did you receive payment?

A. I don't recollect how I received payment.

Q. What circular do you refer to?

A. When they bought that first lot of stock in.

Q. When was that?

A. My impression is it was in May, 1876.

Q. Is this the circular that you refer to? (Witness shown Exhibit I.)

A. Yes, sir.

Q. Have you read the circular?

A. I only read the top of it.

Q. Is it the circular to which you refer?

A. Yes, sir.

79 Q. Didn't you know then under that circular the bank was purchasing its own stock?

A. No, sir.

Q. Did you know that any stock had been purchased by any one under that circular?

A. When we came to sell the stock we always came to see Colonel Britton, and often Mr. Curtis, but Mr. Curtis generally declined to buy; sometimes he did.

(Objects to all questions as to purchase of stock under that reduction in 1875, of the stock of the bank, as irrelevant and immaterial.)

Q. This circular says the amount of stock needed to be bought and cancelled to effect the reduction can be obtained at rates less than par, and is signed by Edward P. Curtis, cashier. You said you had purchased or sold stock to Colonel Britton under this circular; did you not know that you were selling that stock to the bank, and that the bank purchased the same?

A. No, sir; my idea was that the stock we sold was sold previous to issuing the circular. I don't think I saw the circular at the time it was issued.

Q. The stock you sold was sold previous to that?

A. Yes, sir.

Q. I am speaking of the sale made by you of Mr. Laflin's stock; didn't you know at that time that the bank had been buying in stock under this circular?

A. No, sir. That circular, if I am correct in it, had nothing to do with the later purchases at all.

Q. I am aware of that, but my question is, didn't you see this circular before you had made the sale?

A. Yes, sir.

Q. Then you knew the bank had been purchasing in stock under that circular before you made the sale of Mr. Laflin's stock?

(Objected to because it didn't come to him in this transaction within the scope of any agency which he claimed, and unless it came to him as such agent the knowledge is not binding on the principal.)

A. I never knew at any time that the bank had purchased stock.

80 Q. You had seen the circular before?

A. I had seen the circular.

Q. In making sales to Col. Britton, after having seen this circular, did you, or did you not, know whether he was buying individually or for the bank under this circular?

A. I only knew that he gave his check for the stock individually.

Q. You didn't know of the purpose or for whom he was purchasing this stock?

A. No, sir; if he had given his check as president of the bank, I would have collected it; but he gave his check as an individual.

Q. Then if he had bought the stock as president of the bank, you would have collected the check—for what reason?

A. I considered the bank perfectly good in every respect. I considered the bank strong in all respects.

Q. What do you mean by you "would have collected it"?—put it through the clearing-house?

A. Yes, sir.

Q. Instead of collecting at the counter?

A. Yes, sir.

Q. You would have gotten the money finally?

A. Yes, sir; I presume so.

Q. Did you tell Mr. Laflin to whom you had sold that stock?

A. I don't recollect that I told him that particular time. I told him some time afterwards. He asked me about it & I told him.

Q. What did he ask you?

A. To whom I had sold the stock, and I told him to Col. Britton.

Q. Was that previous to your paying the money to him?

A. That was after he received my check.

Q. When these certificates were delivered to you, the power of attorney on the back was signed?

A. I think so.

Q. Did you deliver the certificates in that shape to Colonel Britton?

A. They were not delivered by me, but by one of my clerks.

Q. Did you write in the name of Girault here?

A. No, sir; it looks like Mr. Curtis' handwriting.

81 Q. Then the name of the party constituted attorney to make the transfer was blank when you delivered the certificates to your young man?

A. Yes, sir.

(Exhibits A, B, C, D, & E were shown witness and identified as the certificates delivered by him to Jas. H. Britton.)

Cross-examination:

Q. What was the name of that young man you sent the certificates by?

A. Meredith Taylor.

Q. You have stated that you didn't tell Mr. Laflin that you had sold this stock to Colonel Britton until some time after you had sent him your individual check for $4,995.50?

A. Yes, sir.

Q. How long afterwards?

A. It was a considerable time afterwards. Not until Mr. Laflin asked me.

Q. It was not until after the bank had failed?

A. Possibly it may. He came in and asked me about it. It isn't customary to state to whom you sell stock.

Q. You didn't tell him until six or eight weeks after?

A. It was a considerable time. My idea is, it was after the bank had failed.

Q. At the time of the transaction, so far as you know, Mr. Laflin did not know whom you had sold to?

A. I think I met Mr. Laflin on 3rd & Pine, as I was coming out of Mathew's office, and he said, "I know who you sold that stock to, as well as you do. You sold it to Col. Britton, and I could have gotten as much for it as you did."

Q. Was that after the transaction was over?

A. I don't recollect. It must have been after the transaction. It was after the completion of the transaction, because I remember thinking it didn't agree with Mr. Laflin's statement what a splendid price had been obtained for the stock.

Q. I don't ask you for that. Do you remember being down
82 in Mr. Laflin's office yourself during the pendency of this transaction?

A. No, sir.

Q. Were you there?

A. During the pendency of this transaction?

Q. That sale of the 85 shares of stock—yes.

A. No, sir.

Q. Was your partner there?

A. No, sir.

Q. Who was your partner at that time?

A. William C. Little.

Q. Is he in town yet?

A. Not in the city at present. He will be in a few days.

Q. Have you got that check you gave Mr. Laflin on the banking house of Bartholow, Lewis & Co.?

A. I presume we have.

Q. Have you any objections to producing it?

A. No, sir.

Q. I would like to see it.

A. I will have to go up and get it.

Q. On the 16th day of May, the day you gave your check, the firm of P. F. Kelleher & Co. was composed of yourself and William C. Little?

A. Yes, sir.

Q. Did that firm on that day have money enough with Bartholow, Lewis & Co. to meet that check?

A. I think so; yes, sir. The check would have been bound whether we had money there or not.

Q. You have already stated that at the time of the transaction you did not know that Col. Britton was acting for anybody but himself?

A. I didn't know.

Q. He gave you the individual check which was produced here?

A. Yes, sir.

Q. That is the check you collected?

A. Yes, sir.

Q. You didn't know at the time he was buying for the bank?

A. No, sir.

Q. You did inform Mr. Laflin of that before you had sold the stock? and took the certificate?

A. We did not.

Q. You didn't give him any intimation?

A. We did not.

Q. To whom did you deliver these certificates?

A. To whom did I deliver them?

Q. Yes.

A. I delivered them to Meredith Taylor.

83 Q. You didn't come to the bank yourself?

A. No, sir.

Q. Meredith Taylor is your clerk?

A. Yes, sir; that is my recollection, that I delivered them to him. I know I didn't come to the bank. I know I sent them by one of the men at the office.

Q. These entries here made on the transfer book of this bank, showing the transfer of these 85 shares of stock—you were not present when they were made?

A. I was not present.

Q. You were not aware at the time to whom the books showed that they were transferred?

A. No, sir.

Q. You simply sent them by your clerk for delivery at the counter for Colonel Britton?

A. Yes, sir.

Q. That was your direction?

A. It was.

Q. So far as you knew, they were bought by Col. Britton for some party that had not been mentioned?

A. So far as I knew, they were bought by Col. Britton for himself.

Q. That was your impression at the time?

A. I had no impression on the subject. After he gave his check for the stock I ceased to think about it.

Q. At the time you took the check it was your impression, was it not, that you were dealing with Col. Britton?

A. That was my impression all the time.

Q. That he was the purchaser?

A. That he was the purchaser.

Redirect examination:

Q. You stated that Mr. Laflin met you in the street, and stated to you that he knew as well as you did who you sold that stock to; that you sold it to Col. Britton, and he could have gotten as much as you did?

A. Yes, sir.

Q. When was that statement made?

A. Some time after the sale. I cannot say whether it was before the failure or not.

Q. Was it before he asked you to whom you sold the stock?

84 A. I think it was some time before that. I think that because Mr. Laflin has stated so positively that the sale was a splendid one, and had flattered me so much it made me very angry at him, and I said to myself, "You ought to have sold it."

Q. Did he say when he found out?

A. No, sir.

Q. That he knew it from Col. Britton?

A. No, sir; he didn't say so.

Recross-examination:

Q. You stated that you did not on that occasion inform him to whom you had sold?

A. I cannot say; I felt indignant at what he said.

Q. You are indignant yet?

A. It doesn't make any difference to me.

Q. Your feelings are not kind towards Mr. Laflin now?

A. Just as kind as they ever were; I have always esteemed him very much.

(Witness produced check ℳ 3177.)

"ST. LOUIS, 16*th May*, 1877.

"Banking house of Bartholow, Lewis & Co., pay to the order of S. H. Laflin $4,995.

"P. F. KELEHER & CO."

In figures, after the dollar-mark in left-hand corner, 4,995.00, showing 4,995 dollars & no cents. On the end of the check is printed "P. F. Keleher & Co., bankers, 307 North 3rd street." On the back of the check is the signature S. H. Laflin, and stamp, showing the check passed through the clearing house May 17th, 1877.

EUGENE GIRAULT, of lawful age, being produced and sworn on the part of plaintiff, testified as follows:

Q. What position, if any, connected with the National Bank of the te of Missouri did you hold May 16th, 1877?

A. I kept the general books.

85 Q. How long had you been employed in that capacity?

A. From six to eight years.

Q. Do you remember anything about the transfer of some stock by Mr. Sylvester H. Laflin to Jas. H. Britton, as trustee, on the 16th day of May, 1877?

A. The certificates were left on my desk when I was busy, or if I was away, and when I came back I would make the transfer in the book. I don't remember about this; I made so many.

Q. Referring to the transfer of the 85 shares of stock, the 16th day of May, 1877, to Jas. H. Britton, trustee, signed S. H. Laflin, per E. Girault, attorney, in the transfer book of the bank, state whether or not that transfer was made by you and in your handwriting.

A. Yes, sir.

Q. Examine the powers of attorney on the back of the certificates of stock—the certificates of stock heretofore introduced in evidence—the five certificates of stock issued to S. H. Laflin, aggregating 85 shares, and state in whose handwriting appears the name "E. Girault," as attorney.

A. In my own.

Q. State under what circumstances you signed or filled in your name in that blank power of attorney, and transferred and made the transfer on the books of the bank of these shares of stock.

A. Well, when the certificates were brought to me, or left on my desk when I was away, and when I would come back I would make the transfer. I would make myself attorney & I would then transfer the stock. Then, maybe at the time I did not know who to transfer it to, and I would go to Mr. Curtis and ask him to whom the stock was to be transferred, or to Colonel Britton and ask him. If Mr. Curtis knew, he would tell me, or would say "Go and see Colonel Britton." Colonel Britton would say "Transfer that to the account of Jas. H. Britton, trustee;" then I would fill up the power of attorney.

86 Q. Then you signed your name in the blank power of attorney which had been previously signed by Sylvester H. Laflin?

A. Yes, sir.

Q. These certificates were either placed on your desk or delivered, signed by Mr. Laflin and witnessed, and then you put in your name?

A. To enable me to make the transfer.

Q. You made the transfer on the books in accordance with the direction of the cashier or Col. Britton?

A. Yes, sir.

Q. Do you know anything about the funds from which this stock was paid for?

A. Well, it didn't pass through my hand—the payment or anything. I heard Col. Britton sometimes say, "Put it to the account of Jas. H. Britton, trustee;" and I knew what account to put it to.

Q. How did you know?

(Objects to the proof of the mere general practice of the bank unless the witness recollects this transaction.)

Q. How did you know what account it was to be transferred to?

A. I inferred it was for the account of Jas. H. Britton, trustee, because I had to make the entry charging the sundry stocks account of the bank.

Q. Examine Exhibits G & H, and state whether or not they are made in your handwriting.

A. Yes, sir; they are in my handwriting.

Q. Please state what you mean in those accounts by charging Col. Britton, or rather crediting Col. Britton with the amounts and charging the same to sundry stocks account.

(Objected to on the ground that the papers are exhibits and speak for themselves and explain themselves, and that the witness has no right to change or vary it by oral testimony.)

A. You ask why I made the entry; because he had given a check and had to receive a credit.

Q. I ask you why you charged the stocks to "sundry stocks account?"

A. It was stocks belonging to the bank.

Q. To what bank?

A. The National Bank of the State of Missouri.

87 Q. What is the meaning of those two office checks which you hold in your hand?

(Objected to on the ground that they must speak for themselves.)

A. The meaning was this, that Col. Britton had a check out and to receive a credit for it. He had a debit and had to receive a credit. The bank was charged under the name of sundry stocks.

Q. You say Col. Britton had a check out and had to receive a credit?
A. Yes, sir.
Q. From whom?
A. From the sundry stocks of the bank.
Q. On what account—the "sundry stocks account"—the stocks belonging to the bank were placed under the name of sundry stocks. Then the charge, or rather the credit to Colonel Britton, and the debit to the sundry stocks account of the bank, showed that the bank's money paid for the stock?
(Objected to as leading; as asking the witness' opinion; that the written documents speak for themselves.)
Q. I will change the form of the question. What did the charge to the sundry stocks account of the bank and the credit to Colonel Britton show as regards the funds of the bank?
(Objected to because the entries speak for themselves.)
A. It showed what money paid for the stocks bought.
Q. Whose money?
A. The bank's money.
(Question and answer objected to on the same ground as the previous one.)
Q. Did you make any other transfer of stock on the transfer book of like character to the one you just explained?
A. Yes, sir.
Q. Did you have the general charge of the business of transferring the stock on the books of the bank?
A. Yes, sir.
Q. Under whose direction did you make these transfers and entries in the manner that you have explained?
A. Under the direction of the cashier or president.
88 Q. You were the book-keeper of the bank?
A. Yes, sir.
Q. And made the entries as they directed?
A. Yes, sir.

Cross-examination:

Q. Do you remember the particulars of this particular transaction of the transfer of the 85 shares from Mr. Kelleher to Col. Britton?
A. No, sir.
Q. No recollection of it?
A. No recollection of it. As I said before, there was so many. Of course I remember putting my name in the certificates. That is all I remember.
Q. Making yourself attorney?
A. Making myself attorney.
Q. You did that with your own hand?
A. Yes, sir.
Q. Was Mr. Laflin present?
A. No, sir.
Q. Was Mr. Kelleher present?
A. I don't think he was.
Q. Was any one present when you wrote the name in that blank, "E. Girault"?
A. Generally there was no one present. I cannot say; generally there was not.
Q. I will ask you this question: Do you remember whether there was some one else present besides yourself when you wrote in that name?

A. No.

Q. You don't know of your own knowledge whether Col. Britton under the name of Jas. H. Britton, trustee, was holding shares of the stock of that bank, do you?

A. No, unless I made the entry to sundry stocks; then I knew they belonged to the bank.

Q. You only knew from what somebody else told you. You don't know except from what Mr. Curtis or Col. Britton told you?

A. No.

Q. You don't know of your own knowledge?

A. Oh, no, no; but sometimes I would ask.

Q. Yes; but that is what you learned from somebody else, when they told you to enter to sundry stocks account?

A. Then I knew it was for the bank.

89 Q. You knew solely because somebody else had told you it was the bank's?

A. I knew when I was told to charge that entry it was sundry stocks.

Q. How did you know Jas. H. Britton was not trustee for somebody else?

A. That is the reason I was always asking about what it was.

Q. And he told you?

A. He told me.

Q. What?

A. To put it to the account Jas. H. Britton, trustee.

Q. You didn't know who Jas. H. Britton was trustee for?

A. When he said so, I did.

Q. You only knew from his sayso?

A. That is all.

Q. You didn't know of your own knowledge?

A. Of course not.

Q. Do you know why it was that you got checks to the individual account of Jas. H. Britton, trustee, which you charged to him as trustee?

A. Well, when it, his check, was out, of course I knew he had to receive a credit for it, and I charged sundry stocks, and gave Colonel Britton's account credit for it.

Q. The fact is, that Colonel Britton paid for this eighty-five shares with his individual check?

A. Yes, sir.

Q. Then afterwards the bank made it up to him by giving him these office checks?

A. Exactly—yes, sir.

Q. How would a person who sold stock to Colonel Britton, and took his individual check for the price, know that he was buying it for the bank?

(Objected to.)

A. Of course he could not know. Even the teller himself couldn't know.

Q. The person who sold the shares of the stock couldn't know?

A. No, sir.

Redirect examination:

Q. You state that you knew that the bank was the purchaser because it was charged to the sundry stocks account of the bank?

A. Yes, sir.

90 Q. Didn't that charge show that the bank had paid for this stock out of its funds?

A. Yes, sir.

Q. You knew when Colonel Britton told you to sign the stock Jas. H. Britton, trustee, and charge it to the sundry stocks account of the bank, that it was the bank buying the stock?

A. When I was told so, yes.

Q. You knew from the nature of the entry?

A. Yes, sir.

Q. Not from what Mr. Curtis or Col. Britton told you?

A. I knew by the entry I had to make, and that is all.

Recross-examination:

Q. And that entry was made as they told you?

A. Yes, sir.

SYLVESTER H. LAFLIN, of lawful age, being produced and sworn on the part of defendant, testified as follows:

Q. Mr. Laflin, you are the defendant in this case?

A. Yes, sir.

Q. Do you remember of disposing of 85 shares of stock about the 16th day of May, of the National Bank of the State of Missouri?

A. I do.

Q. You may state fully the circumstances of that transaction.

A. I met Mr. Kelleher in the morning of that day as I was coming down the steps of the St. Louis National Bank.

Q. That is not this bank?

A. No, sir; the St. Louis National Bank. He asked me if I had any National Bank of the State of Missouri stock to sell. I told him I did not know that I had, and I asked him if there was any market for it, and he said that there was. And then I asked him who was purchasing it, and he refused to tell me. I remarked that I supposed on account of the approaching of the election that there was a demand for it. He asked me if I would sell my stock, and how much stock I had. I told him I made no reply to that. I asked him what the price was, and he said he thought 59 or 59½. I gave him no order to sell any, and he started to go, and I says, "I believe I will sell ten shares." I thought I would sell ten shares just to find out who was buying the stock. He declined to buy ten shares unless he bought the whole. That ended that meeting.

91 Q. What next occurred?

A. He came down to my office afterwards & tried to persuade me to sell the 85 shares I had. He advised me to do it. I asked him who was buying, and I remarked I wouldn't sell unless I knew who was buying. He declined to tell me, and I never knew who had bought it until after I was sued.

Q. State what took place at your office when he completed the purchase.

A. He came down the second time & said I had better sell the stock, and finally I concluded to do so, and he gave me 4,995 dollars for it—a check on the Bartholow Lewis Bank. He made no account of sales, and I never knew who bought the stock until the bank had failed and after suit was brought against me.

Q. To whom did you deliver the certificates of stock that you sold to Mr. Kelleher?

A. To his clerk.

Q. Did he at the same time give you a check for it?

A. No, sir; I got a check at my office in an envelope, in the afternoon, after three o'clock; the check that was produced here.

Q. You found it at your office?
A. Yes, sir.
Q. Did you collect that check?
A. I deposited it in the St. Louis National Bank & they collected it. My deposit-book would show.
Q. That was not this bank?
A. No, sir; that was the St. Louis National Bank.
Q. Did you keep your private account with the St. Louis National Bank?
A. I did.
Q. Did you keep the account of the firm, the Laflin-Rand Powder Company here?
A. I did.
Q. After you sold these eighty-five shares of stock to Mr. Keleher, did you continue to deposit with this bank the funds of the Laflin-Rand Powder Company, of which you were resident director?
A. I did.
Q. When was the last deposit made by you in this bank?
A. On the day the bank suspended.
Q. A deposit of the funds of that powder company which you represented here?
A. Yes, sir.
92 Q. Your own private account was kept in the St. Louis National Bank?
A. Yes, sir.
Q. At the time that you sold the stock to Mr. Keleher, did you know for whom he was purchasing it?
A. I did not.
Q. Did you ever know, until after this suit was brought against you, that any one claimed that it had been bought for the National Bank of the State of Missouri?
A. No, sir.
Q. Did you know at the time of this transaction that James H. Britton, trustee, had an account kept in the books of this bank as purchaser of stock for the use of this bank?
A. No, sir; I did not know.
(Question and answer objected to on the ground that it was his duty as a stockholder to know every transaction on the books of the bank, and that he was charged with notice thereof.)
Q. Did you ever make an examination of the books of the bank?
A. No, sir.
Q. Did you know at the time that you took Mr. Keleher's check that he was reimbursed by the check of James H. Britton?
A. I did not.
Q. Did you know that the check given by James H. Britton individually was reimbursed to him by this bank?
A. I did not.
Q. Did you know there was any connection between the funds received by you and the funds of this bank?
A. I did not.
Q. Mr. Keleher has stated that you met him on the street after the sale by you of the eighty-five shares of stock to him, and that you stated to him that you knew to whom he had sold the stock as well as he did. I will ask you if you ever had such a conversation with Mr. Keleher?
A. I never did.
Q. Did you have any agreement with him to pay him a commission?

A. I did not; neither did I have any account of sales.

Q. Did you know at the time that you got the check for $4,995 what profit, commission, or percentage Mr. Keleher was making in the transaction?

A. I did not.

93 Q. So far as you knew, he was the purchaser of your eighty-five shares himself?

A. I did not know who they were bought by.

Cross-examination:

Q. In your first conversation with Mr. Keleher, you stated, a short time ago, that you asked him to state who he was buying the stock for, & he refused to tell you. Now what do you mean by saying that, so far as you knew, he was purchasing the stock for himself?

A. Because he told me he was buying.

Q. You stated in your conversation you asked him what price he thought he could get, and he said he thought that he could get 59 or 59½; didn't that show that he was not purchasing for himself?

A. That is what he said; I don't know; but he didn't satisfy me; he wouldn't tell me.

Q. Didn't you know he was buying for somebody else?

A. I did not.

Q. Why did you ask him who he was buying for?

A. Because I didn't want to sell my stock; I didn't want to sell my stock unless I could get all I could for it.

Q. Did you give him the limit on your stock of 58½.

A. I don't remember whether I did.

Q. What is your impression?

A. My impression is I didn't say anything about it at the time. My impression is he told me he would give 59. I offered to sell ten shares and refused to sell any more, and asked him who was buying the stock. I offered to sell ten shares to find out who was buying the stock.

Q. Why did you want to know?

A. So that I could sell it myself.

Q. So that you could sell it yourself?

A. Yes, sir.

Q. Did you know at the time the bank was buying the stock?

H. I did not.

Q. Didn't you have any intimation or notification from any one that you had better sell your stock in this bank?

A. No, sir.

Q. Before you made the sale?

A. No, sir.

94 Q. Were you not advised by friends in the commercial circle to get rid of your stock prior to the date of the sale of the stock?

A. I couldn't say but what I was.

Q. For what reason?

A. I couldn't say what the reasons were for it.

(Question and answer objected to.)

Q. What led you to sell your stock at 59½?

A. The reasons I said; because I wanted to; that is all.

Q. Was it not because you believed the bank in a shaky condition?

A. No, sir.

Q. Why did you sell?

A. Because I wanted the money.

Q. You are a man of means, Mr. Laflin?
A. Yes, sir.
Q. It was not a necessity for you to sell stock at that time?
A. No, sir.
Q. Didn't you know that the bank examiner had about that time been in the course of examination of this bank?
A. No, sir.
Q. Didn't you hear anything of that sort in commercial circles?
A. I didn't hear anything of that sort in commercial circles.
Q. Did you, or did you not hear in one way or another in commercial circles, in the city of St. Louis, that the National Bank of the State of Missouri was purchasing in its own stock, and that you had better sell?
A. No, sir.
Q. You had no intimation to that effect from Mr. Charles Parsons?
A. No, sir.
Q. Never spoke to Charles Parsons about it?
A. No, sir.
Q. Or any other gentleman?
A. No, sir.
Q. You stated that you told Mr. Keleher that you would not sell until you knew who was buying, and you did sell before you knew?
A. Yes, sir.
Q. Now, the $4.995.00 that you received from Mr. Keleher—didn't you know before you received that, that he had received from Mr. Britton more money for the stock than that?
A. I did not know whom he had sold the stock to.
Q. Didn't you know that he had received more money from
95 the man he had sold the stock to than that?
A. I did not.
Q. Didn't he notify you that he had received $5,037.50 for the stock?
A. No, sir; he did not.
Q. You had no notification of the sale of the stock except the delivery to you of the envelope with a check of $4,995.00 in it?
A. That is all.
Q. You are sure that you didn't agree to give Keleher & Co. a percentage or commission of half a dollar a share for selling?
A. I am.
Q. Did you know anything about the sale of this Smith stock?
A. Yes, sir.
Q. Did you have any agreement with them about that?
A. No, sir.
Q. Did they account to you for the proceeds of that sale?
A. They did.
Q. Did you know when they accounted to you for it that they had received fifty cents a share more than they accounted to you for?
A. I did not; I sent Mr. Smith the check he gave me.
Q. Did you advise Mr. Smith to sell?
A. I did not; I did not telegraph him; I wrote to him that I had sold my stock, and he telegraphed me to sell his.
Q. Did you give him any reasons why you had sold?
A. I did not.
Q. Didn't you authorize Mr. Keleher to sell your stock for what he could get?
A. No, sir.
Q. Didn't you authorize him to sell the stock for 58½?
A. No, sir

Q. 59?
A. No, sir.
Q. 59½?
A. I don't remember that.
Q. What is your impression?
A. My impression is he sold the stock and sent me a check.
Q. You know that?
A. Yes, sir.
Q My question is, what is your impression; whether you authorized him to sell the stock for 59½?
96 A. I cannot remember anything about that.
Q. You knew that an election of stock was coming on pretty soon?
A I did.
Q. An election of directors, I mean.
A. Yes, sir.
Q. You stated something about supposing there would be a demand for stock on account of this election?
A. I did.
Q. Why did you think so?
A. Because I knew that parties were anxious to be directors of the bank, and I supposed the stock would be bought to vote themselves in; and I tried to find that out from Mr. Keleher.
Q. You found that out from Mr. Keleher?
A I tried to.
Q. Do you know who those parties were?
A. No, sir; I did not know; I asked that question.
Q. Didn't you know it was generally understood that at this election there would be a struggle for who would be the directors of the bank?
A. No, sir.
Q. You knew there was to be an election?
A. Yes, sir; I heard it.
Q. Didn't you hear or have reason to believe that all of the directors were endeavoring to maintain their positions as directors in the bank?
A. I did not; I did not know whether there would be any change or not.
Q. Was there not a very great contest on that subject?
A. I cannot say.
Q. How do I understand your saying that you believed there would be a demand on account of the election for the stock?
A. I tried to find out what made the demand; I supposed it was that.
Q. Didn't you know there was a demand for the stock?
A. I did not.
Q. Didn't you know that other stockholders had sold their stock?
A. I did not, until Mr. Keleher spoke to me about the stock.
Q. Do you know Russell Hinckley?
A. I do.
97 Q. You are acquainted with him?
A. Yes, sir.
Q. Didn't you know he had sold his stock then, at that time?
A. I never knew until after I was sued, and then he spoke to me.
Q. Do you know John L. Thom?
A. No, sir.
Q. Do you know Rufus J. Lackland & W. G. Clark?
A. Yes, sir.

Q. Didn't you know that they had transferred or sold their stock at that time?

A. I did not.

Q. Didn't they ever notify you of that fact?

A. They never did.

Q. Didn't you know that John Knapp had sold his stock at that time?

A. I didn't know that he was a stockholder.

Q. Or that Mr. Stickney had sold his stock?

A. I did not.

Q. Or E. Walsh?

A. He told me after I was sued that he had sold.

Q. You didn't know it before?

A. No, sir.

Q. Didn't you know that the bank had been buying in its stock previous to this time—of the sale made by you?

A. No, sir.

Q. You had been a stockholder for some time?

A. Yes, sir.

Q. Did you ever receive a circular like that?

A. I did.

Q. You read it, did you not?

A. Yes, sir.

(Witness is shown circular, marked Exhibit I, and asked if he ever received a circular like this, and he answer' that he did.)

Q. This circular says that the amount of stock needed to be bought & cancelled to effect the reduction can be obtained at rates less than par, and signed Edward P. Curtis, cashier, and headed National Bank of the State of Missouri, in St. Louis. Didn't you know from that circular that the bank was buying its stock for the purpose of cancelation at the time you received the circular?

A. No, sir, I didn't.

Q. I will ask you whether or not you didn't vote upon the proposition to reduce the capital in answer to that circular?

A. I did.

Q. I will ask you whether this is not your vote?

A. Yes, sir; that is my vote.

98 (Witness identifies vote, dated St. Louis, January 1st, 1876, to reduce the capital stock of the bank to two million five hundred thousand dollars, as being his signature—hereto attached and marked Exhibit J.)

(Objected to, as relating to the reduction of stock made under that circular, and that the vote having been made January 1st, 1876, and the reduction of stock accomplished at that time in pursuance of that vote, had been completed for more than a year prior to the sale of the 85 shares of stock at the date May 16th, 1877, and the previous reduction of the capital stock of the bank had nothing to do with this transaction; and because at the time of the sale there was pending no vote on the reduction of the stock.)

Q. That vote was voted to reduce the stock of this bank in accordance with this circular, was it not?

A. Yes, sir.

Q. Then you knew that the amount of stock necessary to the reduction had to be bought in order to effect the reduction?

A. I suppose so; of course.

Q. And you voted for it?

A. I did.

Q. Then you knew in 1875 & following—December 31st, 1875, & following—that the bank was purchasing its own stock, didn't you; and you voted *it for*, you say?

A. I knew they were going to try to purchase stock to reduce the capital stock, but under that circular I didn't know that the bank was purchasing.

Q. You knew that it had been?

A. I knew that a long time ago that they did.

Q. That purchases were to be effected?

A. I understood—that was the understanding, I suppose.

Q. Do you know when this reduction of stock took place?

A. No, sir.

Q. So far as your knowledge extends, they may have been buying stock under that circular up to the time they failed?

99 A. I don't understand your question.

Q. You stated that you didn't know when the reduction under that circular was effected—this refers to the stock needed to be bought and canceled after December 31st, 1875. Now, if you didn't know that the reduction had been accomplished, so far as your knowledge extends, they may have been buying stock under this circular up to the time they failed?

A. I did not. I asked Mr. Curtis, and he told me it had been reduced.

Q. When was that?

A. I could not say.

Q. Was that before you had sold?

A. A year ago.

Q. Didn't you know that the bank was buying stock in contemplation of another reduction?

A. I did not. I asked Barton Bates about that, and he said——

Q. Asked him what?

A. I asked him if the bank intended to reduce its capital further, and he said no; that they had no money to buy stock with. I remember asking him that question.

Q. Do you remember when that was?

A. I think it was several months ago.

Q. Prior to the sale of your stock?

A. Yes, sir.

Q. You received for the transfer of your stock $4,995.00?

A. Yes, sir.

Q. And got the benefit of that money by collection through your bank?

A. I did.

Q. You transferred your stock by signing your name to the power of attorney and leaving the name of attorney blank?

A. I did.

Q. And delivered the certificates in that condition to Keleher's clerk?

A. I did.

Q. Not knowing to whom you sold the stock?

A. As I said, I asked him at the time of the transaction, and he refused to tell me who had bought it. I refused in the first

100 place to sign my name until I knew. I told him I knew Colonel Britton well, and I didn't think it was treating them right to transfer the stock without seeing them. He refused to tell me who bought the stock. I asked him several times, & at one time I said I

wouldn't sell it unless I knew, and I insisted upon going up and directing the transfer of the stock in person. I said to him, "How do you know but what I owe the bank?" He said he would take the chances on that. He came to my office twice and talked with me about it. I first met him on the steps of the St. Louis National Bank, and afterwards he came to the office.

Q. Do you remember, at any time subsequent to the sale of this stock, saying anything about Mr. Keleher's having made a good sale?

A. I don't remember.

Q. Do you mean to say you never did?

A. I don't remember.

Q. Do you testify that you never did?

A. I don't remember that I did.

Q. The question is, whether it is a question of memory or absolute denial?

A. I don't remember saying anything to him about it at all.

Redirect examination:

Q. This transaction between Mr. Keleher and Mr. Smith, of Chicago, took place after you had sold the 85 shares?

A. Yes, sir.

Q. You have stated that Mr. Keleher made that purchase also?

A. Yes, sir.

Q. And gave a check to you, which you remitted to Mr. Smith?

A. Yes, sir.

Q. Did you have any interest in that transaction?

A. No, sir.

Q. You were simply a friend of Mr. Smith?

A. Yes, sir.

Q. You were carrying on a correspondence with him at that time?

A. Yes, sir.

Q. You wrote to him that you had sold your stock, and he told you to sell his also?

A. Yes, sir.

Q. You made no statement to him why you had sold?

A. I did not.

101 Q. Did you appear, after you had sold or transferred these certificates and sold your shares to Mr. Keleher, did you ever appear as a voter among the stockholders of this bank?

A. No, sir; after I sold the stock how could I?

Q. Do you know who voted the stock that you sold, the 85 shares sold May 16th, at the election which took place May 29th?

A. I do not know, except what I heard.

Q. Did you ever see these certificates, or know what had become of them after you delivered them to Mr. Keleher?

A. I never did.

Recross-examination:

Q. You knew that Jas. H. Britton was president of the bank & had been a long time previous to the sale to the bank?

A. Yes, sir.

Q. You knew that he had been a director of that bank for many years?

A. Yes, sir.

Q. At the election in 1872 you voted the stock you held in the bank?

A. I do not know whether I did or not. I cannot say. If I was here I did. If I was in the city I voted the stock.

(Objected to, as it was not part of this transaction.)

Q. If you voted, and I understand the poll-books show that you did——

(Witness is shown poll-book.)

A. I was one of the judges of the election.

Q. Didn't you vote for Britton, Bates, & Eads?

A. I can't say. I voted whatever the ticket was. [Examining book.] Yes, sir; I did.

Q. You knew that this bank hadn't held an election since 1872 up to 1877?

A. I knew she hadn't had an election for a long time.

Q. You were a stockholder in the bank up to the 16th day of May, 1877, and took no measures to investigate the affairs of the bank?

A. I did not.

Q. Or find out anything about the transactions of the directors of the bank at all?

A. No, sir; I considered the bank sound.

102 Q. How did it happen that on the 8th day May you withdrew your deposit?

A. I did not. I had a check on this bank for several thousand dollars a few days before it suspended. We make our collections on the first of the month.

Q. But I am speaking of your individual account?

A. I never had any individual account here for years. There was a balance remaining here for years. That was all my deposit according to the books of the bank.

Q. You say you hadn't carried your individual account at this bank for years?

A. No, sir?

Q. Where?

A. At the St. Louis National Bank.

Q. You carried your firm account here?

A. Yes, sir.

Q. All the time?

A. Yes, sir.

Exhibit J attached to deposition.

SAINT LOUIS, *January 1st*, 1876.

The undersigned, shareholder of the capital stock of the National Bank of the State of Missouri, in St. Louis, do hereby vote as stated below, upon the proposition to reduce the capital stock of the bank to two million five hundred thousand dollars.

Signature.	Residence.	Number of shares.	
		For.	Against.
Sylvester H. Laflin	Saint Louis.	80	

A. S. ACKERSON, being duly sworn on the part of the defendant, testified as follows:

Q. Please state your name, age, residence, and occupation.

A. My name is A. S. Ackerson; I board at the Lindell Hotel; age, 31; occupation, cashier of the Laflin & Rand Powder Co. of this city.

Q. On the 16th day of May, 1877, how were you engaged; in what were you engaged?

A. In the same business.

Q. Are you acquainted with Mr. Keleher—P. F. Keleher, broker?

A. Yes, sir.

103 Q. Do you know anything about his visiting the office of the Laflin & Rand Powder Co. and having an interview with Mr. Laflin in regard to some eighty-five shares of stock in the National Bank of Missouri, owned at that time by Mr. Laflin?

A. Yes, sir; I do. I believe that was in 1877 or 1876—1877.

Q. Please state what you witnessed on that occasion; what you saw and heard pass between the parties.

A. My remembrance is, the original conversation between Mr. Laflin and Mr. Keleher was that Mr. Keleher came into the office himself and asked Mr. Laflin if he wanted to sell his stock in the old bank. Mr. Laflin asked Mr. Keleher what he could get for it. Mr. Keleher said he could get 58½, or possibly a little more. Mr. Laflin finally concluded to take—to accept the offer, and sold the stock. Mr. Laflin also asked Mr. Keleher who he was going to sell the stock to. Mr. Keleher remarked, no matter about that. Mr. Laflin asked him if he should go to the bank to make the transfer. He said no, all he wanted him to do was to sign the certificates.

Q. You know Mr. Keleher, do you?

A. Yes, sir.

Q. You identify him as the same gentleman now present at the taking of this deposition?

A. Yes, sir.

Q. Did anybody sign the certificates as a witness?

A. I signed them myself, I believe.

Q. Was that done in Mr. Laflin's office?

A. Yes, sir.

Q. Who else was present when you signed your name as witness to the transfer on the back of the certificates?

A. I don't remember. I think it was one of Mr. Keleher's clerks.

Q. At the time the certificates were delivered, they were delivered to one of Mr. Keleher's clerks?

A. Yes, sir.

Q. How long was that after the conversation you have detailed?

A. It was only a few days after, as near as I can remember.

Q. Was Mr. Keleher in person at the office at any other time pending the negotiation of the sale of the Laflin stock?

A. Mr. Keleher was there twice to my recollection.

Q. How long after the first visit before he came back again?

104 A. I don't remember.

Q. Do you remember what passed at the second conversation?

A. No, sir.

Q. Do you recollect distinctly that he was there again before the sale was actually made?

A. Yes, sir.

Q. Was anybody else present at the time Mr. Keleher called there the first time, when he had that conversation you have described?

A. Yes, sir; Mr. Laflin's son and Paul D. Maher, the driver, were present.

Q. Have you personally any interest in this transaction?

A. No, sir.

Q. Have you any means of knowing whether Mr. Laflin at the time

knew who was the purchaser of the stock that was sold through Mr. Keleher?

A. No, sir. To my knowledge Mr. Laflin had no means of knowing who was going to purchase the stock. He had no means of knowing Mr. Keleher was going to sell to anybody else.

Q. Do you know when he first found out that he was not selling to Mr. Keleher himself or somebody else?

A. The first that Mr. Laflin knew that Col. Britton got the stock was about a week after the bank had failed.

Q. Were you present at the time he found it out?

A. Yes, sir.

Q. Who communicated it to him?

A. Mr. Keleher.

Q. Where did that conversation take place?

A. At Mr. Laflin's office.

Q. About a week after the bank failed?

A. Yes, sir.

Q. Please state what conversation took place at that interview.

A. Well, all I remember in regard to the conversation was that Mr. Laflin asked Mr. Keleher if he would now tell him who he had sold that stock to, and Mr. Keleher said Col. Britton.

Q. Was anything said between the parties at the time the sale was made that Mr. Keleher was acting for Col. Britton?

A. No, sir.

Q. Or for any other person whose name was disclosed?

A. No, sir.

Q. Did Mr. Keleher on that occasion disclose the name of any principal for whom he was acting?

A. No, sir.

Q. Did you hear all the conversation that took place between
105 Mr. Keleher and Mr. Laflin on that occasion?

A. Yes, sir.

Q. You were present, and were you near enough to hear all that passed between them?

A. Yes, sir.

Q. And heard all that was said?

A. Yes, sir.

Q. What means, if any, did you have from the position which you occupied, with reference to Mr. Laflin's affairs, of knowing the state of his information about this stock, as to the person to whom it was sold; what position did you occupy at that time; what was the nature of your duties at that time?

A. Mr. Laflin & I always talked over matters of that kind a great deal, in connection with his private affairs, and he always expressed himself very freely to me, so that I generally understood what his ideas were in regard to his private affairs; the only means I had of knowing was what I got through Mr. Laflin himself.

Q. I don't wish to ask a leading question, but I wish to direct your attention as to whether you occupied a confidential relationship with Mr. Laflin at that time in relation to business matters?

A. Yes, sir.

Q. What was that relationship? I mean by that—just state whether you were his confidential clerk or business manager at that time?

A. I am his confidential clerk so far as his private business is concerned.

Q. Were you at that time?

A. Yes, sir.

Q. Do you think from the position you had that you would have known, if Mr. Laflin had known, to whom he was selling that stock?

A. Yes, sir; I am pretty sure I would.

(Objected to all of examination as irrelevant & immaterial.)

Cross-examination:

Q. Mr. Ackerson, at what time was the first interview between Mr. Keleher and Mr. Laflin?

A. I won't be quite positive about that. I think it was the day before the stock was transferred; I won't be sure.

106 Q. Do you know when it was transferred?

A. I think it was transferred on the 16th day of May; that is the day that Mr. Keleher gave his check and it was deposited. I think the stock was transferred on that day.

Q. Who else was present at the time the conversation took place between Mr. Keleher and Mr. Laflin besides yourself and those gentlemen?

A. No one that I remember.

Q. Do you recollect what time of the day it was?

A. I do not, sir; I think it was in the forenoon.

Q. Can you give about the time—whether it was as early as 10 o'clock?

A. I cannot.

Q. Are you sure it was in the forenoon?

A. I am quite sure that it was.

Q. This Mr. Keleher here is the gentleman that came to Mr. Laflin's office?

A. Yes, sir.

Q. You think it was the 15th day of May?

A. It was one or two days before the stock was transferred. I don't remember just how long.

Q. It was before—it was one or two days before the 16th of May?

A. Yes, sir.

Q. What year?

A. 1877.

Q. You say in your testimony that Mr. Laflin agreed to take 58½ for his stock at that time; are you positive about that?

A. I understood Mr. Laflin to ask Mr. Keleher what he could get for it, and Mr. Keleher said 58½, possibly a little more, and Mr. Laflin sold the stock.

Q. You stated in your testimony, as just read, that Mr. Laflin agreed to take 58½ for his stock. I ask you are you positive about that?

A. Please read the question.

Q. What offer do you mean?

A. That was all of that conversation.

Q. You say he accepted the offer; was that the offer of 58½, is the question I ask?

A. In my reply, I said that Mr. Laflin finally accepted the offer

107 and sold the stock. I don't remember that he told Mr. Keleher right there at that moment that he would take that.

Q. What do you mean by accepted the offer?

A. That he sold the stock to Mr. Keleher, and got his money for it at the offer.

Q. He didn't do that, then, at that time, did he?

A. My recollection is that Mr. Laflin told Mr. Keleher that he would let him know, and Mr. Keleher went out; and Mr. Laflin went out a short time after and accepted the offer; that is my recollection.

Q. Then he didn't accept the offer at the time of the first interview?
A. No, sir; I don't think he did.
Q. How long was it afterward that he saw Mr. Keleher, and accepted the offer?
A. The same day, I believe.
Q. Where was that?
A. I don't know.
Q. You were not present?
A. No, sir.
Q. How do you know he did it, then?
A. Because he came to the office and told me so.
Q. You simply know from what Mr. Laflin told you?
A. Yes, sir.
Q. Did he state what offer he had made?
A. No, sir.
Q. Did he state what offer he had accepted?
A. I don't recollect that he did.
Q. Did you know what offer he had accepted?
A. No, sir; I did not know until I saw the check.
Q. Do you know now what offer he accepted?
A. I knew the amount of the check.
Q. Was anything said about selling the 85 shares in bulk for so much money, in any of these conversations?
A. The conversation in my presence was just as I have stated. When Mr. Laflin asked Mr. Keleher what he could get for it, and Mr. Keleher said, 58½, possibly a little more.
Q. Nothing was said about giving so much money for the 85 shares of stock in bulk, but so much a share?
A. There was nothing said about so much in bulk for so many shares.
108 Q. At the time that Mr. Laflin reported to you that he had accepted the offer, did he report to you that he had accepted an offer for so much money for the 85 shares of stock, or an offer of so much per share?
A. My recollection is that he said that he got so much net for his stock.
Q. So much net; what was that?
A. I don't recollect the amount that he stated. I believe the amount of the check, though——
Q. Mr. Ackerson, did Mr. Laflin report to you at the time he received 4,995 dollars for his stock?
A. No, sir; he did not.
Q. Did he report to you he would receive 58½ per share for his stock?
A. No, sir.
Q. Did he report to you he would receive 59½ for his stock?
A. No, sir; he did not report any amount that I recollect of.
Q. He said he had accepted the offer made?
A. He said that he was going to get so much net. I don't remember the amount.
Q. Did he say so much in bulk, or so much per share?
A. I forget what he said.
Q. Did Mr. Laflin tell you he had accepted the offer made by Mr. Keleher of 58½ at the prior conversation?
A. No, sir.
Q. He didn't say anything about that?
A. No, sir.

Q. Where did this conversation take place?
A. At Mr. Laflin's office.
Q. What part of the building?
A. The ground floor.
Q. Is that where Mr. Laflin's private office is?
A. No, sir.
Q. Whose office is that?
A. The Laflin & Rand Powder Co.'s office.
Q. The office you occupy?
A. Yes, sir.
Q. Mr. Laflin's private office is up stairs?
A. Yes, sir.
Q. Now, Mr. Ackerson, you say you signed the certificates as a witness to the assignment; was that done the same day that this conversation took place?
A. I don't think it was.
Q. I mean the conversation in which Mr. Laflin told you he had accepted the offer?
A I believe it was.
Q. The same day?
A. Yes, sir.
109 Q. Can you remember what day that was?
A. No, sir; I cannot remember distinctly. I think it was the 16th day of May.
Q. Who were present at the time you signed the certificates as witness?
A. I don't remember anybody being present, except a young man that they were delivered to, who I think was Mr. Keleher's clerk.
Q. Was Mr. Laflin present?
A. Yes, sir.
Q. Who was that clerk—do you know the name of the clerk?
A. No, sir.
Q. Would you know him if you were to see him?
A. I don't think I would.
Q. Is it this gentleman before you? (pointing to Harry E. Weber.)
A. It looks very much like him. I couldn't be positive as to that.
Q. Do you remember in that conversation anything being said by Mr. Laflin about one of the certificates being burned or crisped; I do not mean destroyed, but burned or defaced?
A. In the conversation between Mr. Laflin & Mr. Keleher?
Q. No, in this interview where you signed the certificates as witness, when Mr. Keleher's clerk and Mr. Laflin and yourself were present?
A. I don't remember such a conversation.
Q. Do you remember whether or not any of those certificates were crisped or burned in the fire?
A. I do not.
Q. Who delivered the certificates to the clerk of Mr. Keleher?
A. Mr. Laflin.
Q. Was the name of Mr. Keleher inserted in those certificates at the time as having been assigned to him?
A. I don't remember about that. I don't think that there was any name inserted. I know that Mr. Laflin asked the question if he should go to the bank to have them transferred.
Q. Was that at the interview between you and the clerk and Mr. Laflin?
A. That question was asked both times.

Q. Both times?

A. Yes, sir.

110 Q. How many interviews did you have with Mr. Laflin, or know of taking place between Mr. Laflin & Mr. Keleher?

A. The only conversation that I recollect anything about between Mr. Laflin & Mr. Keleher was the conversation in my presence in regard to the selling of the stock. I remember seeing——

Q. That is the only time that you saw this gentleman (pointing to Mr. Keleher) down there?

A. No, sir; I remember seeing Mr. Keleher step into the office one day after that, it may have been the same day, or the next day.

Q. Did you hear the conversation?

A. I didn't hear the conversation. I was busy in another part of the office. I didn't pay any attention to it. The only conversation I heard is the one I spoke of.

Q. At the time that Mr. Laflin said he would like to go up to the bank and transfer the stock, or asked Mr. Keleher if he didn't want him to go up and transfer the stock?

A. I believe Mr. Laflin asked that question at that time. I know Mr. Laflin asked the young man that came down after the certificates if he didn't want him to go to the bank and have them transferred, and he said no, all he had to do was to sign it.

Q. Are you positive that that was the conversation between Mr. Laflin & Mr. Keleher?

A. I won't be quite positive, but I think he asked that question then.

Q. Are you as positive about that as you are about any other of your testimony in regard to that interview?

A. I am positive about all of my testimony that I have stated as positive.

Q. I ask you, if your memory serves you as well on that point as on the others?

A. No, sir, it does not.

Q. Don't you know that you are mistaken about any such conversation taking place when Mr. Keleher was present?

A. I don't understand the question.

Q. Don't know that you are mistaken in stating that you think
111 the conversation in regard to the transfer of stock by Mr. Laflin himself took place at the interview between Mr. Keleher & Mr. Laflin. I will state the question in a different shape. You have testified that the conversation in regard to Mr. Laflin coming up here and transferring the stock in both conversations, the one with Mr. Keleher, and the one with the clerk of Mr. Keleher?

A. Yes, sir.

Q. Are you not mistaken about that conversation taking place at the time when Mr. Keleher was present?

A. I say I won't be positive about that conversation at the time that Mr. Keleher was present. I am positive about Mr. Laflin asking the clerk that question when he delivered the certificates.

Q. What did the clerk tell him?

A. He said, "No, sir; all I want you to do is to sign the certificates."

Q. Don't you know that it could not have taken place when Mr. Keleher was present, because Mr. Laflin did not then agree to sell the stock?

A. It occurred to me that Mr. Laflin asked Mr. Keleher at the time if it would be necessary for him to go to the bank and have the stock transferred; Mr. Laflin said he didn't like the idea of parting with the

stock; he said he had known the directors of the bank, and didn't like to sell his stock without going up to the bank and seeing them about it.

Q. Mr. Laflin was asking about transfer of stock, that was the case?

A. Yes, sir. He didn't sell the stock that day.

Q. Not on that day, but said he would see about it?

A. Yes, sir.

Q. You stated in your testimony, as read over here, that the signing of the certificates by you as a witness, and the delivery to the clerk took place only a few days after the conversation between Mr. Keleher and Mr. Laflin. Now, do you mean the original conversation between Mr. Keleher and Mr. Laflin?

A. Yes, sir.

112 Q. Well, what do you mean by a few days; do you mean four or five days, or two or three?

A. It may have been the next day, it may have been two or three days.

Q. It may have been the next day?

A. Yes, sir.

Q. Then, if Mr. Laflin sold his stock to Mr. Keleher at the interview between Mr. Keleher and Mr. Laflin which you heard, why was it that Mr. Keleher didn't then give him a check for the money?

A. I don't quite understand that question.

Q. Read it (to the notary).

(Question read.)

A. I don't think I stated that Mr. Laflin sold the stock to Mr. Keleher. I stated that Mr. Keleher made an offer, and he saw Mr. Keleher after and accepted the offer.

Q. The same day?

A. Yes, sir; I believe it was the same day.

Q. Did Mr. Keleher then give him a check for the money?

A. I don't remember when the check was given.

Q. Do you remember how Mr. Laflin got the check?

A. No, sir; I don't remember the way he got it. I could not be positive about it. I think the young man brought it down.

Q. The young man that came after the certificates brought the check?

A. Yes, sir, I think so. I won't be positive about that.

Q. Are you as positive about that as you are about other matter you have testified to?

A. No, sir.

Q. Are you as positive about that as you are about the conversation and transfer of stock by Mr. Laflin?

A. No, sir; not by any means.

Q. Do you knew anything about the transfer of the Smith stock?

A. No, sir.

Q. Do you know anything about the delivery of the certificates of the Smith stock?

A. No, sir.

Q. Were you present when they were delivered by Mr. Laflin to Mr. Keleher's clerk, or to him?

A. I do not remember.

Q. Do you know anything about the Smith stock being sold?

A. Yes, sir; I remember that there was a young man, I think

113 one of Mr. Keleher's clerks, came in and asked Mr. Laflin if he wanted to sell the Smith stock, and Mr. Laflin told him he would write to Mr. Smith and find out, and he sold the stock.

Q. Who sold the stock?

A. I won't say who sold it. The stock was sold. I don't remember

anything about that. I may not have been in the office at the time the conversation took place.

Q. At the time that Mr. Keleher & Mr. Laflin had the conversation in which Mr. Keleher made the offer and said he thought he could get 58½ for the stock, or a little more, you stated that Mr. Laflin asked him who he was going to sell to; why did he ask that question if he was selling to Mr. Keleher?

A. I don't know his motive in asking that question. I know that Mr. Laflin had an idea at the time that some parties in the western part of the State wanted to get the stock; he thought that they wanted to get the stock in order to become directors in the bank.

Q. He knew that Mr. Keleher was a broker?

A. Yes, sir.

Q. What do you suppose that Mr. Laflin meant by asking after the bank had failed if he would now tell him who he had sold that stock to, if he thought he sold to Mr. Kelher himself?

A. Mr. Laflin wanted to find out who bought the stock; to whom it had been transferred, in case it had been transferred at all.

You testified that Mr. Laflin thought that he was selling the stock to Mr. Keleher?

A. I don't know that Mr. Laflin thought anything of the kind. I say he had no means of knowing who was buying the stock; he had no means of knowing.

Q. Don't you know that you and Mr. Laflin both knew that Mr. Keleher was simply selling that stock on commission for Mr. Laflin?

A. I don't know anything of the kind.

Q. Don't you know that Mr. Keleher effected the sale of that stock for Mr. Laflin for half a dollar a share commission?

A. No, sir.

114 Q. Don't you know that Mr. Keleher reported to Mr. Laflin that he had sold that stock—forty-five shares @ 59½, forty shares at 59, and that he deducted 50c. a share, and sent him the balance of the money?

A. No, sir.

Q. Didn't you read a note to that effect enclosed in an envelope to Mr. Laflin?

A. No, sir.

Q. Did you ever see such a note?

A. No, sir.

Q. Didn't you open Mr. Laflin's correspondence?

A. Not his private correspondence.

Q. Did you ever receive any note from Mr. Keleher reporting the sale of this stock?

A. No, sir.

Q. A note in pencil?

A. No, sir.

Q. Did you ever know of such a note being brought there?

A. No, sir.

Q. You don't remember anything about this?

A. No, sir; I don't remember seeing any note.

Q. What did you see in regard to this transaction?

A. I saw the check.

Q. What check?

A. The check for the stock.

Q. Was that all you saw?

A. I saw the stock delivered to the clerk.

A. I won't say who sold it. The stock was sold. I don't remember

Q. Anything else?
A. I don't understand what you mean.
Q. Did you see anything else in connection with this matter?
A. No, sir.
Q. Did you write a letter to Mr. Smith about the sale of this stock?
A. No, sir.
Q. Do you know whether that letter was copied in Mr. Laflin's letter-book—in his copy-book?
A. I don't think it was. He very seldom copies any of his private correspondence.
Q. That was private?
A. Yes, sir.
Q. Do you know that Mr. Laflin sold the stock to Mr. Keleher; will you swear that he did?
A. No, sir.
Q. Do you know anything about it?
A. Nothing farther than I have stated.
Q. You don't know anything about who bought the stock?
A. No, sir.
115 Q. Your reasons that you have for saying that Mr. Laflin knew he bought the stock was that Mr. Keleher wouldn't tell him who he was selling to?
A. Mr. Keleher wouldn't tell him, and Mr. Laflin had no means of knowing who he was acting for.
Q. Now, if Mr. Keleher told Mr. Laflin that he thought he could get 58¼, perhaps a little more, don't you think that was sufficient notice that he was selling to somebody else; that he would infer from that that he was?
A. A man might say that even if he was buying stock for himself.
Q. Did Mr. Keleher say he was buying for himself?
A. No, sir.
Q. Did you see the check before Mr. Laflin saw it?
A. I don't remember.
Q. Do you remember whether the check was delivered to Mr. Laflin in person or delivered to you for him?
A. I don't remember whether Mr. Laflin was in the office when the check was brought in or whether it was left there.
Q. Did you open the letter or note containing the check?
A. No, sir; when Mr. Laflin is at home I very seldom open his private correspondence. I never pay any attention to it when he is at home. When he is away from home I generally open his private correspondence.
Q. Then you didn't open the envelope containing the check?
A. No, sir.
Q. You don't know of his receiving envelope containing the check?
A. No, sir.
Q. You saw the check there?
A. Yes, sir.
Q. Mr. Laflin gave it to you?
A. Yes, sir.
Q. What did he tell you at the time he gave you the check?
A. He simply showed me the check & says, "There is the check for my stock;" and I remarked at the time, "Good by, old bank," and that was all that was said.
Q. Do you remember the amount of the check?
A. I believe it was 4,995 dollars.

Q. I would like to get your best recollection on this point. You stated that Mr. Keleher told Mr. Laflin that he thought he
116 could get 58½, perhaps a little more, for the stock, & afterwards Mr. Laflin said he had seen Mr. Keleher and had accepted that offer. Did you understand that he had accepted the offer of 58½ which had been made before by Mr. Keleher?

A. Mr. Laflin came into the office and said, "Well, I have sold my stock."

Q. And didn't you say he said, "I accepted the offer"?

A. He came into the office & says, "I have sold the stock." I don't remember exactly the conversation that took place.

Q. You are mistaken in saying he had accepted the offer?

A. No, I am not mistaken. Mr. Laflin stated he had accepted that offer—that was the remark.

Q. Was it your understanding that it was an acceptance of the offer made in your presence, made by Mr. Keleher to him?

A. No, sir.

Q. What was your understanding of it if there was no other offer made?

A. No; well, I may say yes. He accepted the offer that Mr. Keleher had made; that was my understanding.

Q. The one made in your presence?

A. That was my understanding. When he came in he said he had accepted the offer & sold the stock. It was my understanding that he had accepted the offer that Mr. Keleher had made.

Q. Didn't he state when he came into the office that he was going to sell his stock, and had authorized Mr. Keleher to sell it at 58½?

A. No, sir.

Q. Wasn't that the conversation?

A. No, sir.

Q. Are you positive about that?

A. I am, sir.

Q. Did he ever say anything to you after the sale, and after he had received the money, about its being a good sale?

A. I don't remember that he ever did.

Q. Didn't you ever hear him compliment Mr. Keleher in having effected a good sale?

A. No, sir.

Q. Did you ever hear him tell anybody else that Keleher & Co. had effected a good sale of the old bank stock?

A. No, sir; I never did.

117 Q. Did you ever have any conversation with Mr. Laflin about the condition of the old bank previous to that time?

A. No, sir.

Q. Did he ever say anything to you about the condition of the bank previous to that time—you were his confidential agent and clerk?

A. Well, we talked about the bank a good deal, but never said anything about its condition. Mr. Laflin considered the bank perfectly good. We kept two bank accounts; one at the St. Louis National Bank and one at the National Bank of the State of Missouri, and he always told me to divide the deposits between them. I hadn't deposited anything in this bank for a few days previous to their closing. Mr. Laflin came into the office one morning and says, "I see you haven't deposited anything in the old bank; put your next deposit in there.' I happened to get a check for 181.51 dollars that day, so I brought that

up here & put it in. If it had been a large amount it would have been put in all the same.

Q. Did he give you any reason why he sold this stock?

A. No, sir.

Q. When he came in and told you he had determined to sell his stock, did he give you any reason?

A. No, sir.

Q. Did he tell you why? Mr. Laflin was not a poor man.

A. No, sir.

Q. He didn't need the money at that time particularly that you know of?

A. No, sir.

Q. Did he give you any reasons why he sold the stock in the bank, which he considered perfectly good, and demonstrated that fact by making a deposit of 181 dollars and some cents? Why would he sell his stock in that bank at a discount of 42 per cent.?

A. The stock?

Q. I ask you if he gave you any reason?

A. No, sir; he did not.

Q. He didn't tell you anything about that?

A. He didn't tell me anything about it.

Q. Isn't he in the habit of telling you what he does—his private business—you are his confidential adviser?

118 A. Yes, sir; he asks my advice.

Q. Did you advise him to sell?

A. Yes, sir.

Q. Why?

A. Because it was worth more then than it had been for some time.

Q. Do you mean to say the bank was worth more or the stock was worth more in the market?

A. It was bringing more on the market.

Q. It was not bringing anything like par?

A. No, sir.

Q. Why did you advise him to sell? He didn't need the money, did he?

A. My advice to him was on general principles, on account of the general depression in stock.

Q. You advised him to sell all his other stock?

A. No, sir; we didn't have any conversation about any stock but this.

Q. Why did you select this stock and advise him to sell it from amongst his other stock?

A. This is the stock he asked me about.

Q. In that conversation did he give you any reason why he thought it a good idea to sell?

A. No, sir.

Q. Did you give him any reasons?

A. No, sir. I simply said I thought I would sell.

Q. He didn't give you any, and you didn't give him any, reasons for selling?

A. No, sir; not that I recollect.

Q. You say, none that you recollect?

A. I don't recollect; we had considerable conversation.

Q. Did Mr. Laflin state anything why he was picking this stock out from among his other stock for sale?

A. Mr. Keleher had come in and made an offer for this stock; that is the reason.

Q. That was after Mr. Keleher & Laflin had that conversation?

A. Oh, yes, sir.

Q. Then you advised him to sell at the offer Mr. Keleher had made?

A. I advised him to sell at the offer.

Q. And afterwards he came and told you he had accepted that offer?

A. Yes, sir.

119 ADDISON H. LAFLIN, being produced and sworn on the part of defendant, testified as follows:

Q. Please state your name.

A. Addison H. Laflin.

Q. Your residence.

A. 3216 Washington avenue.

Q. Your age.

A. Twenty-six.

Q. Occupation.

A. Powder business.

Q. Are you acquainted with the defendant in this suit, Sylvester H. Laflin?

A. Yes, sir.

Q. Are you in any way related to him?

A. He is my father.

Q. Were you in his employ in 1877?

A. I was.

Q. Were you present in his office at that time in May when some conversation took place between Mr. Keleher and Mr. Laflin about the purchase of some stock?

A. Yes, sir.

Q. Please state what occurred there.

A. I know very little about it, but I know this much: Mr. Keleher said he could get 58½ or a little over.

Q. State how that came about; when Mr. Keleher first came there.

A. About the 16th of May, as I understand it, Mr. Keleher came into the office, and Mr. Laflin was out; either he had not come down *and* had been down and gone out. Mr. Keleher took up the paper and read it. In the meantime Mr. Laflin came in, and Mr. Keleher got up and asked him about buying some stock. I didn't hear all of the conversation, but I heard this much, that Mr. Laflin wanted to go up and transfer the stock, and Mr. Keleher says, "No, I will attend to that"; and my father asked him who was buying it, and Mr. Keleher wouldn't tell him, and said that he would transfer it himself, and my father signed it in blank afterwards.

Q. Do you remember how long after that before the money was paid and the stock delivered?

A. It may have been the next day or two or the same day. I saw the check after it came in. I think it was brought down by
120 young Taylor, who worked for Mr. Keleher. I think I saw it there. It was laid on the desk when my father was out. It strikes me I took it myself. I saw it laying on the back desk where the bookkeeper was. It was for 4,995 dollars, and signed P. F. Keleher & Co.

Q. Do you know Mr. Keleher personally?

A. I do.

Q. Do you identify him as the gentleman now present at the taking of this deposition?

A. I do.

Q. Is that the same man that had that conversation with your father that morning?

A. I do.

Cross-examination:

Q. What was said about 58½ a share? You said something was said about that.

A. Something about that, but I don't know exactly. He said he thought he could get that.

Q. Mr. Keleher stated that?

A. Yes, sir.

Q. Did your father accept that offer then?

A. About accepting it, I do not know anything about that. I didn't hear all of the conversation right there at the desk. I didn't hear all of the conversation that took place. I didn't hear all of it; it was only some portion of it that I heard. I was hard of hearing, and couldn't hear all that was said.

Q. You presume that your father accepted it, as he spoke of coming up and transferring it himself?

A. Yes, sir.

Q. Your understanding was that he accepted 58½ for the stock as thus offered by Mr. Keleher?

A. No; I didn't say that.

Q. You stated that you recollect that Mr. Keleher offered 58½, or said he thought he could get that?

A. Or 59.

Q. Didn't your father authorize the sale of this stock then, & order the transfer on the books of the bank?

A. That is what I understood him to say. I known that he said, "I will sell it to you at 58½; whatever you get over that belongs to you."

121 Q. And that he would come up and transfer it?

A. Yes, sir; he wanted to go up and transfer it.

Q. Did Mr. Keleher give a check for it?

A. Not at that time; Mr. Keleher went out, and as to the same day, or the day after that, I forget—I think it was the same day—the check was sent down. Young Mr. Taylor brought it down.

Q. Your understanding of the transaction, then, was that after Mr. Keleher stated that he thought he could get 58½ for it, and your father stated, "I will sell it to you for 58½, and all over that you can have," they made the sale?

A. I don't know the exact words—something similar to that.

Q. And that evening or the next day the check was sent down?

A. Yes, sir; not in the evening; it was sent down in the morning, about—it may have been eleven or twelve o'clock. I think it was the same day.

Q. Was the stock then delivered—I mean at the first interview, or when the check was sent down?

A. I do not know about that.

Q. Then you understood that something was said at the time to the effect that Mr. Keleher should have something for making the sale—that is, he might have all over 58½ that he could get?

A. Something that way.

PAUL D. MAHER, being produced and sworn on the part of defendant, testified as follows:

Q. You may state your name.

A. Paul D. Maher.
Q. Your age?
A. 45.
Q. Your residence?
A. St. Louis—used to be Lowell.
Q. Your occupation?
A. Clerk for the Laflin & Rand Powder Co.
Q. In 1877, in May, what were you doing?
A. I was in the same position ever since I have been with him—clerk.
Q. Did you know P. F. Keleher?
A. Yes, sir.
122 Q. You recognize this gentleman now present at the taking of this deposition as the same man?
A. That is the gentleman.
Q. You identify him?
A. Yes, sir.
Q. Do you know of an occasion—did you hear any conversation between Mr. Keleher & Mr. Laflin about the transfer or sale of some stock Mr. Laflin owned in the old State Bank?
A. I wasn't particularly interested. I heard only part of the conversation, not all of it, and didn't pay any attention to it.
Q. Where did that conversation take place?
A. 218 North Second street, at the powder co.'s office.
Q. Was Mr. Keleher there?
A. Yes, sir.
Q. What passed between them?
A. All I heard, I heard Mr. Laflin ask the question; he asked him who bought the stock of the old bank, and he declined to tell him.
Q. What did he say?
A. He said he didn't want to tell him; Mr. Laflin said he wanted to go up and transfer the stock—that is what I understood. I paid no farther attention; I was not interested; it was none of my business, and I paid no farther attention to it.

Cross examination:

Q. This conversation took place after the sale had been made, as he asked him who had bought the stock?
A. I suppose it may have been. I don't know anything about that.
Q. He asked who bought the stock; it must have been after the stock was sold.
A. It is not necessary for me to presume anything.
Q. You are positive that was the form of the question?
A. As near as I can recollect.

HARRY E. WEBER, being produced and sworn on the part of plaintiff, testified as follows:

Q. Are you acquainted with Mr. Keleher?
A. Yes, sir.
123 Q. Are you acquainted with Mr. Laflin?
A. Not personally.
Q. Do you know him when you see him?
A. Yes, sir.
Q. And know where his office is?
A. Yes, sir.

Q. Do you know anything about any transaction in regard to his stock in the old Bank of the State of Missouri—the national bank—with P. F. Keleher & Co., the 16th of May, 1877?

A. Yes, sir.

Q. State what you know about it.

A. Mr. Keleher said to me "Go down to Mr. Laflin's office and get some stock," and I said, "What stock?" Mr. Keleher says, "National Bank of the State of Missouri stock that I have sold for Mr. Laflin." I went down to Mr. Laflin's office, and saw Mr. Laflin personally, and says, "I came from Mr. Keleher to get that stock." Mr. Laflin says, "Wait here and I will go down to the Safe Deposit Company and get the stock"; and I waited there in his office, it may have been fifteen or twenty minutes, and started to go back to our office, and met Mr. Laflin on the corner of Olive and Second street, as I was coming up the hill. I went back to the office with him; then we went up into his private office upstairs. We looked through the certificates. I have forgotten the exact numbers. One of them was butchered up on the back. It had been transferred, and the transfer was crossed out. I wrote a new transfer and Mr. Laflin signed that. Then we came to the steps, and as I got to the door of Mr. Laflin's office a gentleman was going by on the street, and he said to him——

Q. You mean the front door of the building?

A. Yes, sir; on Second street. Mr. Laflin said to this gentleman, "Good morning," and the gentleman says, "Good morning," and Mr. Laflin says, this firm of Keleher & Co. are one of the best brokers I ever heard of, or words to that effect. They have sold this stock, pointing to the stock I had in my hand, and got for it more than my limit.

124 I want to say that before this Mr. Laflin, in his office, had made this remark to me, "You are one of the best brokers I ever heard of." Then I carried the stock back to the office, and Mr. Keleher told me to go over and deliver the stock.

Q. To whom?

A. To Colonel Britton.

Q. Did you deliver it?

A. Yes, sir; I delivered the stock and got Colonel Britton's check, and came back to the office.

Q. And gave the check to Mr. Keleher?

A. Yes, sir.

Q. Do you know anything about any note or statement as to the sale of this stock being sent by Mr. Keleher to Mr. Laflin prior to the time that you went down to get the stock?

A. No, sir; I cannot say that I do.

Q. Did you take the check to Mr. Laflin's office?

A. I think I did.

Q. I mean the check that Mr. Keleher gave in payment for this stock?

A. I think I did.

Q. Whom did you deliver it to?

A. To Add. Laflin, Mr. Laflin's son.

Q. What was the shape in which you delivered it? Was it in an envelope, or did you just hand him the check?

A. To my best knowledge and belief, I just handed him the check.

Cross-examination:

Q. Where do you live? What is your name?

A. Harry E. Weber.

Q. Where do you live?

Witnesses,
Henry Hyde Smith
Isaac A. Allison

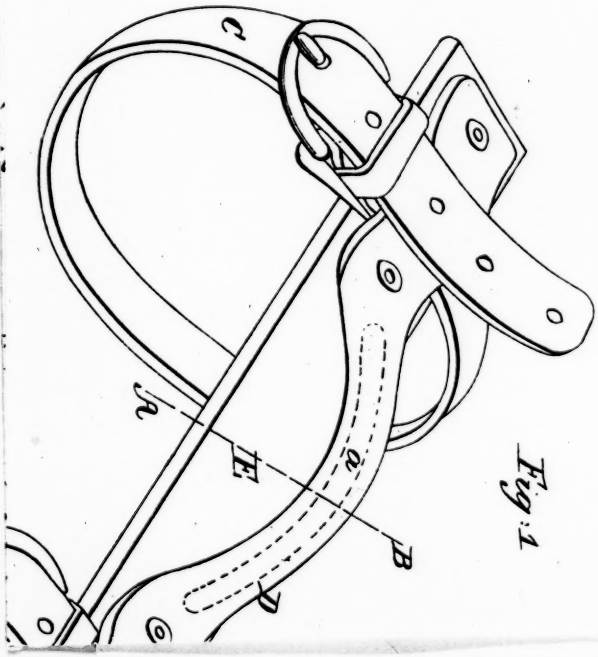


Fig. 1.

Q. You were one of the best brokers he ever saw?
A. He said, you are one of the best brokers I ever heard of. I didn't take that to myself.
126 Q. You have said that you do not know him?
A. Yes, sir; I said that; not personally.
Q. Did he know you then?
A. I said I didn't take it to——
Q. I am asking you what he said, not how you took it.
A. That is what he said.
Q. Did he know you at that time?

Q. Do you know anything about any transaction in regard to his stock in the old Bank of the State of Missouri—the national bank—with P. F. Keleher & Co., the 16th of May, 1877?

A. Yes, sir.

Q. State what you know about it.

A. Mr. Keleher said to me "Go down to Mr. Laflin's office and get some stock," and I said, "What stock?" Mr. Keleher says, "National Bank of the State of Missouri stock that I have sold for Mr. Laflin." I went down to Mr. Laflin's office, and saw Mr. Laflin personally, and says, "I came from Mr. Keleher to get that stock." Mr. Laflin says, "Wait here and I will go down to the Safe Deposit Company and get the stock"; and I waited there in his office, it may have been fifteen or twenty minutes, and started to go back to our office, and met Mr. Laflin on the corner of Olive and Second street, as I was coming up the hill. I went back to the office with him; then we went up into his private office upstairs. We looked through the certificates. I have forgotten the exact numbers. One of them was butchered up on the back. It had been transferred, and the transfer was crossed out. I wrote a new transfer and Mr. Laflin signed that. Then we came to the steps, and as I got to the door of Mr. Laflin's office a gentleman was going by on the street, and he said to him——

Q. You mean the front door of the building?

A. Yes, sir; on Second street. Mr. Laflin said to this gentleman, "Good morning," and the gentleman says, "Good morning," and Mr. Laflin says, this firm of Keleher & Co. are one of the best brokers I ever heard of, or words to that effect. They have sold this stock, pointing to the stock I had in my hand, and got for it more than my limit.

I want to say that before this Mr. Laflin, in his office, had made
124 this remark to me, "You are one of the best brokers I ever heard of." Then I carried the stock back to the office, and Mr. Keleher told me to go over and deliver the stock.

Q. To whom?

A. To Colonel Britton.

Q. Did you deliver it?

A. Yes, sir; I delivered the stock and got Colonel Britton's check, and came back to the office.

Q. And gave the check to Mr. Keleher?

A. Yes, sir.

Q. Do you know anything about any note or statement as to the sale of this stock being sent by Mr. Keleher to Mr. Laflin prior to the time that you went down to get the stock?

A. No, sir; I cannot say that I do.

Q. Did you take the check to Mr. Laflin's office?

A. I think I did.

Q. I mean the check that Mr. Keleher gave in payment for this stock?

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Q. Whom did you deliver it to?

A. To Add. Laflin, Mr. Laflin's son.

Q. What was the shape in which you delivered it? Was it in an envelope, or did you just hand him the check?

A. To my best knowledge and belief, I just handed him the check.

Cross-examination:

Q. Where do you live? What is your name?

A. Harry E. Weber.

Q. Where do you live?

A. Here in town.
Q. What place?
A. 1032 Winter street.
Q. Are you a clerk for Mr. Keleher?
A. Yes, sir.
Q. Don't you know that when you went down there with that check that you couldn't have had that conversation you say that you had with Mr. Laflin from the fact that he was not there when you went there?
A. I didn't say I had a conversation with Mr. Laflin when I went there with the check. The conversation was when I went to get the certificates of stock. That is the time I had the conversation.
Q. Didn't you get the certificates at the same time that you gave the check?
A. No, sir.
125 Q. Did you get them before?
A. I think I got the certificate of stock before I delivered any check.
Q. Wasn't that after you delivered the check?
A. I don't think it was.
Q. Would he have delivered the certificates before he got his money?
A. I don't know about that.
Q. When they were already signed in blank, so that anybody could have taken them to the bank and had them transferred, would he have given them up unless he got something for them; is that usual?
A. It is out of the custom.
Q. Would it not have been a very unusual thing to be done?
A. No, sir; I don't think it would. Since I have been in Mr. Keleher's employment we have often had transactions of that nature—that I wouldn't give anything in payment & would get the thing that was sold, and the checks would be delivered afterwards. I don't know what Mr. Laflin thought about it.
Q. Don't you know that when you went down there to get the certificates of stock that Mr. Laflin was not there, and you got them from Mr. Ackerson in an envelope, to whom Mr. Laflin had given them with directions to give them to you when you called for them?
A. No, sir; I don't know anything of the kind. When I went down there he said what I said before. I went down for the stock, and he said it is up at the Safe Deposit Co.; I will go up after it. And he kept me waiting there in his office fifteen or twenty minutes before he got back.
Q. And when he came back you have stated he said that you were one of the best brokers that he ever saw?
A. It was while we were in his private office.
Q. And he told you you were one of the best brokers he ever saw?
A. Yes, sir.
Q. You were one of the best brokers he ever saw?
A. He said, you are one of the best brokers I ever heard of. I didn't take that to myself.
126 Q. You have said that you do not know him?
A. Yes, sir; I said that; not personally.
Q. Did he know you then?
A. I said I didn't take it to——
Q. I am asking you what he said, not how you took it.
A. That is what he said.
Q. Did he know you at that time?

A. He knew I was from P. F. Keleher & Co., because I had stated that.

Q. Didn't you swear that you didn't know Mr. Laflin personally?

A. I don't say that I know him personally now.

Q. How can you reconcile it to your conscience that he would tell you that you were the best broker he ever saw when he didn't know you?

A. From the nature of the transaction.

Q. Haven't you got this from Mr. Keleher himself?

A. No, sir.

Q. From a conversation with him?

A. No, sir; I have not.

Q. Have you ever talked with Mr. Keleher about it?

A. I have had some conversation with Mr. Keleher in regard to this; yes, sir.

Q. Isn't that the language that has been gone over between you and him?

A. What language?

Q. That Mr. Laflin said you are the best broker he ever heard of; hasn't that been gone over between you?

A. Mr. Keleher asked me what transpired at the office, and I stated it to him in the exact words I have stated now.

Q. Isn't it a fact that Mr. Keleher told you that he had this conversation with Mr. Laflin, and you have talked it over with Mr. Keleher until you are under the impression now that that language did actually take place when you were there?

A. No, sir; it is not.

Q. You think that language was justified from anything Mr. Keleher knew about you?

A. I have just stated I didn't take it for myself. It was intended for Mr. Keleher.

Q. Mr. Keleher was not present?

A. No, sir.

127 Q. He used the word "you," and was addressing you?

A. He used the word "you," and I knew he was referring to the firm.

Q. You were the only one present?

A. I think I was.

Q. What is your age?

A. Twenty.

Q. You are quite youthful in your appearance, are you not; your appearance is rather youthful?

A. A little that way; yes, sir.

Q. You were not present at the time the conversation took place between Mr. Laflin & Mr. Keleher when the stock was sold?

A. No, sir.

Q. Keleher had been down there to Mr. Laflin's office?

A. I don't know.

Q. Didn't he tell you so?

A. No, sir.

Q. How did he come to tell you to go down there and get the certificates?

A. I don't know how he came to do it.

Q. Did Mr. Keleher tell you that himself?

A. Yes, sir.

Q. Did he tell you to go and get the certificates, and you went?

A. Yes, sir.

Q. How long after that did he tell you to go down there and take the check?

A. I don't recollect.

Q. He sent you there twice, did he?

A. Yes, sir; I went there twice.

Q. How long apart were those visits, that is, how long after the first did he send you back with the check?

A. Ten or fifteen minutes. I am not positive about the time.

Q. But it was the same day?

A. Yes, sir; the same day to the best of knowledge and belief.

Q. Ten or fifteen minutes after you went down and got the certificates you went back and took the check?

A. Yes, sir.

Q. Do you remember the amount of that check?

A. No, sir; I do not.

Q. Did you deliver it to Mr. Laflin?

A. No, sir; to Add. Laflin, he was sitting at his desk at the right-hand side of the office as I went in.

128 Q. This took place on the same day, on the day that you got the certificates of stock. After you got the certificates what did you do with them?

A. I came back to the office and showed Mr. Keleher the certificate I had written the power of attorney on, and then I came down right immediately after; he told me to deliver the stock to Col. Britton, and I came down and delivered the stock. I recollect that from the fact that it was raining like the "dickens" when I came out.

Q. You brought the stock first to Mr. Keleher?

A. Yes, sir.

Q. And he told you to bring it to Col. Britton?

A. Yes, sir.

Q. You then brought it to Col. Britton?

A. Yes, sir.

Q. Did you give it to him—himself in person?

A. I gave it to him in person.

Q. Where was he standing?

A. He was not standing; he was sitting in his office?

Q. In this room?

A. In the back room of the bank.

Q. The room we are in now; this is the rear room of the bank?

A. Yes, sir; the room we are in now.

Q. What did Col. Britton say when you handed him the certificates?

A. I don't recollect what he said.

Q. You didn't get any money from him?

A. I got a check.

Q. You got a check from Col. Britton?

A. Yes, sir.

Q. For whom—to whom was it payable?

A. I think it was payable to P. F. Keleher & Co., because Mr. Keleher endorsed the check P. F. Keleher & Co.

Q. What was done after that?

A. I went out and got the money for it.

Q. You came right back and got the money after getting the endorsement?

A. Yes, sir.

Q. The money was paid to you?

A. Yes, sir.

Q. What did you do with that money?

A. I took the money back to our office, counted the money, made
129 out a deposit ticket and deposited it.

Q. At whose bank?

A. Bartholow, Lewis & Co.

Q. Was that when you kept your deposits?

A. Yes, sir.

Q. Did they keep all their deposits there at that time?

A. Yes, sir.

Q. Did you have a bank account large enough to pay that check that you took to Mr. Laflin, independent of the check that you got the money for of Colonel Britton?

A. I do not know.

Q. Did Keleher & Co. have funds enough to their credit on that day to pay that check that you gave Mr. Laflin, independent of what you received from Col. Britton?

A. I cannot recollect.

Q. Do you know what amount of funds they had on hand at that bank that day?

A. No, sir.

Q. What was the usual size of their deposits at that time?

(Objected to as irrelevant.)

Q. Was their account good with the bank for the check you gave Mr. Laflin?

A. I think it was.

Q. Independent of what you got from Col. Britton; your check would have been paid independent of that check?

A. I don't know; the check would have been paid anyway.

Q. Independent of the check from Col. Britton?

A. Yes, sir.

Q. You have stated that you had no personal acquaintance with Mr. Laflin at the time you went after the certificates?

A. No, sir; I had no personal acquaintance with him.

Q. If you went there ten or fifteen minutes after you got the certificates with the check, can you state what became of Mr. Laflin?

A. No, sir.

Q. Had he, in the mean time, left his office?

A. I do not know whether he was in his office or not; I do not know; I am pretty positive I gave that check to Add. Laflin, although I may be mistaken, but I think I did.

130 Q. Did you have anything to do with the transfer made for Mr. Smith, for Chicago, a week after this?

A. No, sir.

Q. Do you know anything about that?

A. Do you mean I know anything about it?

Q. I want to know whether you negotiated that sale in any way?

A. No, sir, not at all.

Redirect examination:

Q. Colonel Slayback asked you if you had any conversation with Mr. Keleher about this matter; did he at any time attempt to influence your testimony in regard to that transaction?

A. No, sir.

Q. What did he say to you?

A. He told me to tell the facts in the matter if it criminated him to the highest degree.

Q. To tell the facts as you remembered them?
A. As I remembered them.
Q. In the transactions and business of Keleher & Co. did you have anything to do with transactions of this kind?
A. With the negotiations?
Q. Yes, sir.
A. No, sir; any transactions in regard to the buying and selling of stock are always referred to Mr. Keleher.
Q. You simply execute orders as he directs?
A. Yes, sir.

MEREDITH TAYLOR, being produced and sworn on the part of plaintiff, testified as follows:

Q. Where do you reside?
A. 3248 Olive street.
Q. St. Louis?
A. Yes, sir.
Q. Are you acquainted with P. F. Keleher?
A. Yes, sir.
Q. Are you a clerk for P. F. Keleher & Co.?
A. Yes, sir.
Q. Were you last May?
A. Yes, sir.
Q. Do you remember anything about a transaction in regard to the stock of Sylvester H. Laflin in the National Bank of the State of Missouri?
A. Yes, sir.
131 Q. Please state whether or not—at what time did that transaction take place, if you recollect; please state.
A. I do not think I can remember the dates; I remember by looking over the books.
Q. What date?
A. The 16th of May.
Q. Do you recollect having taken any note from Mr. Keleher on that day to Mr. Laflin, before twelve o'clock?
A. Yes, sir, I did.
Q. Do you know anything about the contents of that note?
A. No, sir.
Q. To whom did you deliver it?
A. I don't recollect.
Q. Do you recollect whether you delivered it to Mr. Laflin or not?
A. I did not deliver it to Mr. Laflin.
Q. Did you take it to his place of business in the city?
A. Yes, sir.
Q. And leave it there?
A. And left it there.

Cross-examination:

Q. Was that a check?
A. No, sir.
Q. How do you know, if you did not know the contents of it?
A. That it was a check?
Q. Yes?
A. I know it was not a check.
Q. How do you know?

A. Because I saw the writing on the piece of paper, but didn't read it.
Q. Was it in an envelope?
A. No, sir.
Q. Just in your hand?
A. Yes, sir; written on a small piece of paper.
Q. You didn't read what was on it?
A. No, sir.
Q. Do you know anything about the transaction further than that?
A. No, sir, not about that transaction.

PATRICK F. KELEHER recalled.

Q. When was it you first went down to the Laflin and Rand Powder Company to see Mr. Laflin in regard to the sale of this stock, if at all?
A. I didn't go at all.

132 (Objected to because this question was asked of the witness when he was on the stand in chief, and he stated he was not there at all; and because it is called out of order; and because the witness testified on that subject & was interrogated fully about it when he was on the stand before.)

Q. Mr. Keleher, when did you go to see Mr. Laflin in regard to and what stock?
A. I think I saw Mr. Laflin in regard to the Smith stock.
Q. Where?
A. At his office.
Q. Did you at any time go to his office before the transfer of his own individual stock?
A. No, sir.
Q. To see him in regard thereto?
A. No, sir.
Q. How often were you there in regard to the Smith stock?
A. Once.
Q. Who was present at that time?
A. I don't recollect, sir, who was present.
Q. Were you authorized by Col. Britton to purchase the Laflin stock for him?

(Objected to, because he has no right to go into that question now, having fully covered it in the former examination of this witness, both in the examination and in the re-examination, and because if he was, Mr. Laflin is not bound by it.)

A. No, sir; I don't think I was.
Q. Or for the bank?
A. No, sir; nor for any one else; I wish to say I am not perfectly positive as to going to Mr. Laflin's office to see him in reference to Smith's stock.

Cross-examination:

Q. Are you acquainted with Mr. Ackerson?
A. Yes, sir.

JAMES H. BRITTON, being produced and sworn on the part of the plaintiff, testified as follows:

Q. Are you acquainted with Sylvester H. Laflin?
A. Yes, sir; have known him for some years.
Q. Do you recollect purchasing his stock in the National Bank of the State of Missouri, 16th of May, 1877?
A. Yes, sir.

133 Q. Do you recollect from whom it was purchased?

A. I purchased from Keleher & Co.

Q. Did you at any time give Keleher & Co. any order to purchase the stock of Mr. Laflin, or anybody else for you, as trustee for the bank?

A. No, sir.

Q. Did you at any time have any conversation with Mr. Laflin in regard to the sale of that stock? If so, state when and where.

A. I had no conversation with Mr. Laflin before the sale of the stock. (Objects to any conversation that took place after the transaction. Any conversation that took place after the transaction cannot be binding upon Mr. Laflin.)

A. I met Mr. Laflin the same evening I purchased that stock, or the next evening, on the pavement on Pine street, here besides this house. It was a little late in the evening, as I was starting home. He stopped me and shook hands with me, and remarked that he was very sorry that he had sold that stock of yours. He says, I was very sorry I sold it; but, says he, these men ran down there, said I must sell, and wouldn't let me rest. He said, I know you got it; I always told Mr. Smith he must not sell his stock, and didn't think he would. I said, I was very sorry he had sold, and thought he had made a mistake, or something of that sort. He said that he was very sorry that he had sold it, but these men down there said I must sell, and wouldn't let me rest. That is about the result of the conversation.

Q. In the payment of your check given to Mr. Keleher for Mr. Laflin's stock, state whether or not the funds of the bank were used for the payment of that check, as in every other case where you purchased stock for the bank?

A. I gave Keleher & Co. my check for the amount of the purchase, and I handed the certificates of stock to the bookkeeper and directed him to credit my account with it, giving him a memorandum of so many
134 shares at one price, and so many at another. It was clearly the funds of the bank that paid for the stock.

Cross-examination:

Q. You gave your individual check, I believe, Col. Britton?

A. Yes, sir.

Q. To P. F. Keleher & Co.?

A. Yes, sir.

Q. How they paid for the stock, I suppose you don't know?

A. I had no information on the subject whatever, except what I learned during the taking of testimony in this case.

Q. Of your own personal knowledge?

A. No, sir; none whatever.

Q. In regard to where this conversation took place between Mr. Laflin and yourself, your only recollection exactly about the time is that it was after the sale had been made?

A. I was under the impression that it was the next evening, but in his testimony Mr. Laflin said it was raining, & I recollect it was raining a little. It was late in the evening, and he stopped me in the street, as I was going up the hill; it was most likely the next day.

Q. After the transaction?

A. Yes, sir.

Q. After you had handed the certificates to the bookkeeper?

A. After I had given them to the bookkeeper and the bank had closed.

Q. After giving orders to have the transfer made?

A. Yes, sir; after giving the orders to have the transfer made.
Q. Mr. Laflin was not present at that time?
A. No, sir.
Q. As to the mode in which the bank reimbursed you, neither Mr. Keleher or Mr. Laflin had any notice that you are aware of?
A. None that I know of.
Q. If Mr. Keleher knew, you did not know it?
A. I did not.
Q. The price that was paid was about the market value at that time in the St. Louis market?
A. It was a little less than I had paid for other stock, perhaps the same day, or a day or two before, within two or three days.
135 Q. It was at least in not excess of the market value?
A. It was a little less than I had paid for other stock that day, or within a few days.
Q. Any purchases that you made, you made at the market value?
A. Yes, sir; at the market value. I purchased 45 shares, I recollect, and very soon a written memorandum was sent to me asking me if I would buy 40 shares more. I offered a half per cent. less than I had paid for the 45 shares that same day. The answer went back very soon and was accepted. I recollect that distinctly.

Redirect examination:

Q. Do you know of any other persons purchasing stock of the bank at that time, except yourself, as trustee for the bank?
A. Do you mean on that day?
Q. About that time?
A. I do not know of any sales except a few shares I sold to Samuel and Chouteau. I do not know of any others.
Q. That was bank stock; belonged to the bank?
A. Yes, sir.
Q. You testified as to the market value. I asked the question if you knew of any other persons dealing in stock at that time, of the bank?
A. No, sir.
Q. You state market value. You mean you paid what you thought the stock was worth?
A. Yes, sir.

WM. E. BURR, being produced and sworn on behalf of the plaintiff, testified as follows:

Q. You are president of the St. Louis National Bank?
A. Yes, sir.
Q. Are you acquainted with Sylvester H. Laflin?
A. Yes, sir; I am.
Q. Is he a director in that bank?
A. Yes, sir.
Q. Has he been for any length of time; if so, state how long?
A. Eight or ten years.
Q. Do you know anything about a sale by him of stock in the
136 National Bank of the State of Missouri, about the 16th day of May, 1877?
A. I have no knowledge as to dates.
Q. As to facts?
A. I know that he sold his shares of stock in this bank.
Q. State whether at any time previous to the sale of those shares in the bank, you had any conversation with him in regard to the condition

of the National Bank of the State of Missouri, as to the propriety of his selling his stock therein?

A. I do not think I had any conversation with him, especially with reference to the condition of that bank, but I may say this, that on a certain day I was writing a letter to a personal friend of mine, a non-resident of the city, in which I advised him to sell his shares of stock in the bank, and about the time that I had concluded the letter Mr. Laflin came in, and I remembered he was a stockholder, and read to him the letter I had written to my friend, and said, "now, go and do likewise." I think those were about the words I used to him.

Q. What reasons, if any, did you give him, why he should "go and do likewise"?

A. I don't think I gave him any reasons. I have tried to remember, but I think there was no further conversation passed between us.

Q. Was this previous to his sale of stock?

A. I presume that it was.

Q. Have you a copy of the letter that you wrote to your friend?

A. I have.

Q. Can you remember whether in that letter you gave any reasons why he should sell his stock in this bank?

A. Yes; I do remember.

Q. Please state what these reasons, given in that letter and which you read at that time to Mr. Laflin, were?

A. After referring to other matters in connection with the bank, I stated, "I advise you to sell your shares of stock, because I think you can buy them back again at a profit, if you desire to do so. I do
137 not know what the shares can be sold at;" that is about the substance of it.

Q. Was there anything said in that conversation about the shaky—the uncertain condition of this bank?

A. Nothing whatever.

Q. Was there anything stated by you to Mr. Laflin as to the reason why he should sell his stock in this bank, in regard to your opinion as to its condition?

A. I don't think there was. I read him the letter I had written, and remarked, "Now, go and do likewise."

Q. Did you, at any time previous thereto, have any conversation with Mr. Laflin or in his presence in reference to the condition of this bank, as to its soundness or unsoundness?

A. Not to the best of my recollection.

Q. Did he, at any time, state to you anything about his information as to the condition of this bank?

A. I do not think he made a remark of any kind in reference to it.

Q. At any time previous to the sale of the stock?

A. I have no recollection of any conversation with him about it.

Q. Have you given all the contents of that letter?

A. Not fully.

Q. Will you furnish a copy thereof to be attached to the deposition here?

A. I will.

Q. In this letter which you wrote to Mr. Nelson, and which you read to Mr. Laflin, was it in answer to a letter that you had received from Mr. Nelson in reference to his stock?

A. No. I can state from memory. Mr. Nelson sent me the power of attorney to represent his stock at the election of directors that had been advertised, and farther in the letter I think that he asked if it was not

possible there could be some change in the management brought about. As well as I remember, that was the substance of his letter.

(Objected to the contents of the letter from Mr. Nelson to Mr. Burr, because it does not appear in evidence that the letter had been read to Mr. Laflin, and therefore the above testimony ought to be excluded.)

138 Mr. Burr, would it be too much trouble for you to get that letter? I would like to see it, if you please. You say that you read it to Mr. Laflin?

A. I can bring it in in a few minutes. (Witness brings in his letter book.)

Q. Have you before you the letter-press copy of the letter which you wrote to Mr. Nelson and which you read to Mr. Laflin?

A. I have, sir.

Q. Please read that letter, so that the notary can take it down.

ST. LOUIS, *May* 10, 1877.

JAMES M. NELSON, Esq.,
Boonville, Mo.:

DEAR SIR: I have yours of the 9th inst., with enclosure as stated, & will see that your shares are duly represented. I fear, however, that your desire for a change of management is not likely to be gratified. The grip is yet too strong. Sell your shares promptly, and I think you will be able to buy them back in a short time & make a fair profit. I don't know what they can be sold at now.

Very truly, y'rs,

WM. E. BURR.

Q. Is that the letter which you read to Mr. Laflin?

A. That is the letter.

Q. Did you give Mr. Laflin any reason why you advised Mr. Nelson to sell his shares?

A. I did not, to my recollection.

Q. Any reasons or any advice for selling, or any reference to the condition of the bank?

A. Not to the best of my recollection.

Cross-examination:

Q. You have stated, Mr. Burr, that this is the only conversation you recollect having with Mr. Laflin?

A. To the best of my recollection.

139 EDWARD P. CURTIS recalled:

Q. Do you know how many shares of stock were purchased by Col. Britton with the funds of this bank, between the 1st day of April, 1877, and the day that the bank closed? If so, state.

(Objected to on the ground that it is immaterial, irrelevant and incompetent, and that it does not tend to explain any issue by the complainant in this case against Mr. Laflin.)

A. Between the 1st day of April, 1877, and the closing of the bank, 3,636 shares.

Q. How many shares did the bank hold purchased in this manner on the 16th of March, 1877?

(Objected to on the same grounds stated in the preceding question.)

A. 721.

Q. How many shares did the bank hold purchased in this manner on the 16th day of May, 1877?

(Objected to on the same grounds as stated in the previous question.)

A. 1,921.

Q. How many shares, purchased in this manner, were held by the bank at the time of closing its doors?

(Objected to on the same grounds as stated to the previous questions.)

A. 4,599.

Q. What day was it that the bank closed?

A. June 20th.

Q. What year?

A. 1877.

Q. How many shares do you say she then held?

A. 4,599.

Q. Was Mr. Britton president of this bank the 16th day of May, 1877?

A. Yes, sir.

Cross-examination:

Q. How many shares in all did Mr. Britton ever own himself, individually, in this bank?

A. Himself, individually, he has 1,542 now. His private account shows 1,542 shares to his credit.

Q. How many shares did he own on the 16th of May, 1877?

A. The same amount.

140 Q. How long had he held that number?

A. He held that number since the 6th of October, 1874.

Q. Was that the last entry showing any purchase of stock by him?

A. That shows a debit—that is a sale. The last entry showing a purchase is the 10th of September, 1872.

Q. How many did he sell in 1874?

A. 30 shares.

Q. Was that the first sale after 1872?

A. Yes, sir; and only sale.

Q. Did he never sell any shares of stock after that?

A. No, sir.

Q. Did he ever sell any as James H. Britton, trustee?

A. Yes, sir, several sales of that kind.

Q. When were they?

A. The 28th of May he sold ——

Q. What year?

A. 1877. He sold 25 shares to Web. M. Samuel, and six shares to Chouteau.

Q. Were they transferred from him as Jas. H. Britton, trustee?

A. Yes, sir.

Q. Were not those parties elected directors?

A. Yes, sir.

Q. Was that all the shares of stock they owned?

A. Yes, sir. No, I think Chouteau had some before. Samuel had none.

Q. How many shares did Mr. Chouteau buy of James H. Britton, trustee?

A. Six shares.

Q. Did he know he was buying from the bank?

A. I think that he did.

Q. Did Samuel know it?

A. I think that he did.

Q. Where is your transfer book showing that transfer to them?

(Counsel for plaintiff objects to the testimony in regard to the individual stock of James H. Britton, and to the testimony in regard to the sales of stock by James H. Britton, trustee, to Mr. Chouteau and Mr. Samuel, on the ground of irrelevancy and incompetency, and that the same subject was gone over in the examination in chief.)

Witness produces transfer book, and, referring to same, answers—

A. There is 25 shares to Samuel, and here is 21 to Chouteau.

141 He transferred back fifteen of them.

Q. Please read that. (Witness reads from transfer book of date May 28th, 1878.) "For value received, I, James H. Britton, trustee, hereby assign and transfer to N. S. Chouteau 21 shares of the capital stock of the National Bank of the State of Missouri, on which 2,100 dollars have been paid. In testimony whereof I hereunto set my hand the 28th day of May, 1877. James H. Britton, trustee." Afterwards, on the 31st day of May, N. S. Chouteau transferred back 15 shares to James H. Britton, trustee.

Q. Did Mr. Chouteau know on the 31st day of May that he was selling back to James H. Britton, trustee, shares of stock that belonged to the bank?

A. I don't know that he did. He knew that there had been transferred to him more than he had any need for; he transferred them back and paid for the six shares.

Q. Did Mr. Chouteau come in as a new director?

A. Yes, sir.

Q. What was the date of the election?

A. 29th of May.

Q. It was after the election of directors that he transferred back the 15 shares?

A. Yes, sir.

Q. To James H. Britton, trustee?

A. Yes, sir.

Q. Did he at that time know how t his account, "James H. Britton, trustee," was understood by you, namely, that it represented what actually belonged to the bank in the name of James H. Britton, trustee?

A. I don't know what his knowledge was.

Q. Was he at that time, the 29th of May, 1877, first inducted in as director?

A. Yes, sir.

Q. Mr. Samuel came in at the same time?

A. Yes, sir.

Q. Was any stock transferred back to Samuel?

A. No, sir.

Q. I mean back by Mr. Samuel to James H. Britton, trustee?

A. No, sir.

Q. How many shares of stock does Mr. Chouteau now hold?

142 A. 10; I think he owns 10.

Q. Has Mr. Chouteau ever paid to the bank any money, so far as you know, or to its representatives for this 15 shares transferred back?

A. He only paid for the six; the books show the others were transferred back to the bank.

Q. At the time he bought the 21 shares from the trustee, did he pay any money for it?

A. Not at that time.

Q. That was transferred to him on credit?

A. No, sir; he paid for the six shares.

Q. The transfer appears to have been made on the 28th day of May, the day before the election was held?

A. Yes, sir.

Q. At that time he didn't pay the money, did he?

A. I don't remember what day he paid the money. I know he paid for the six shares.

Q. He transferred back 15 shares May 31st, 1877?

A. Yes, sir.

Q. Which was two days after the election?

A. Yes, sir.

Q. Now, did he actually pay the money at the time the 21 shares were assigned to him by James H. Britton, trustee?

A. I don't remember. I know the books show those six shares entered as paid for.

Q. Isn't it a fact, Mr. Curtis, that all these entries in the books of the bank were made after the bank suspended?

A. Not a single one. There hasn't been the scratch of the pen except as the books designate.

Q. Were not those facts merely kept in a memorandum, and the entries made in the books of the bank by Mr. Girault afterwards?

A. No, sir; they were made on the same day; he was credited on the 28th with 21 shares. The posting may have been a day or two after, but he was credited with the 21 shares, and found it was not necessary, and transferred back 15 shares, and he paid for the six. I think the books show he paid for them on the 31st.

Q. From the entries in the books at the time the transfer was
143 made, on the 28th of May, the six shares were not then paid for?

A. Possibly not.

Q. Didn't pay for them until the 31st?

A. Possibly not.

Q. Then he transferred back 15 shares out of the 21 shares belonging to him?

A. Yes, sir.

Q. When you say it was not necessary to transfer the 21 shares, what do you mean?

A. I presume they had an idea it required 25 shares to constitute a director.

Q. How many shares did he hold previous to that time?

A. Four shares.

Q. Then, in point of fact, when he was elected director on the 29th day of May, 1877, he apparently held on your books 25 shares?

A. Yes, sir.

Q. But two days after that, on the 31st day of May, 1877, he transferred back 15 shares?

A. Yes, sir.

Q. And the bank paid him the money at the time?

A. I think not; the entry is six shares paid for. I presume he found out that he had more shares than he needed. He got no certificate for the 21 shares; he only got a certificate for the six shares.

Q. Your transfer-books show that 21 shares were transferred to him?

A. Certainly, sir; I presume he would have paid for them if he had kept them; he did for those he kept.

Q. Why didn't you issue a certificate to him for the 21 shares?

A. There was no necessity for it; certainly it was not a matter of necessity.

Q. Why do you say that it was not a matter of necessity?

A. Because a man is a stockholder whether he has got a certificate or not.

Q. The certificate for the 21 shares were handed to him by Col. Britton on the 28th of May?

A. No, sir.

Q. At the time he was voted for and elected a director he had no certificate for any but the four shares?

144 A. That is all he held certificates for.

Q. Why was it necessary to transfer the 15 shares back to the bank?

A. Because he didn't want any more than was necessary to constitute a director; I presume that was the reason. I only state from the evidence of the books.

Q. Are you cognizant of the nature of the transaction between Mr. Britton and Mr. Chouteau?

A. Only except what the books show.

Q. Your only information is from the entries in the books?

A. Yes, sir.

Q. Were you present at any vote of the directors when the directors met to authorize the transfer back of the 15 shares?

A. No, sir.

Q. Do you know whether that question came up before them?

A. I don't think it did.

Q. You kept the record?

A. Yes, sir.

Q. You know of no such entry in the record?

A. I know of no such entry in the record.

Q. Was Mr. Chouteau still acting as director at the time the bank was put into the hands of the receiver?

A. Yes, sir.

Q. On the 22d day of June, 1877?

A. Yes, sir.

Q. Did he attend a meeting of the board after the 29th of May, 1877?

A. Yes, sir.

Q. And participated in their actions?

A. He did.

Redirect examination:

Q. Who got the benefit of the money paid by Mr. Samuel and Mr. Chouteau for that stock?

(Objected to on the ground that it was subsequent to the Laflin transaction, and he was not bound by it, and should be affected with notice.)

A. The bank.

Recross-examination:

Q. Do you know what price they paid?

A. 60.

145 Q. Was that the market value of the stock at that time?

A. That is what they paid. I don't know about the market value.

Q. That is what the bank got the benefit of, 60 cents on the dollar?

A. Yes, sir.

SYLVESTER H. LAFLIN recalled.

Q. Mr. Laflin, Mr. Keleher has stated in his testimony, when he was

recalled, that he was not at your office to see you about the transfer or sales of any stock in this bank except the Smith shares of stock. I wish to call your attention to the fact as to whether Mr. Keleher is correct in his recollection on that point.

A. Not correct.

(Objected to on the ground that the matter was fully testified to by Mr. Laflin when he was originally on the stand.)

Q. What stock was it he came to see you about, yours or Smith's?

A. He came to see me about both.

Q. This conversation of which you have spoken about, and in which he offered you 58½, whose stock was that conversation about?

A. That was mine. He was there twice.

Q. How long apart were those sales of your stock and Smith's?

A. I wrote to Mr. Smith I had sold my stock, but was careful not to advise him, but said I had sold my stock unexpectedly. That is all.

Q. How long after your stock was sold before Smith's stock was sold?

A. I think several days.

Q. Col. Britton has testified that he met you in the rain either in the evening after you sold your stock or the evening of the next day. I will ask you what is your recollection as to when that conversation took place between you and Col. Britton?

A. I say positively I didn't see Col. Britton for a long time after the sale.

Q. How long?

A. I think it was at least ten days.

Q. What passed then at that conversation, and when did it
146 take place?

A. I met him here in front of the bank, and says, "I am sorry I concluded to sell my stock"; and he says, Well, I hope you won't leave us; that you will continue to do business with us. That was all that was said.

Q. Did you at that time tell him these words, "I know you got it"?

A. I swear positively I never said that. I never knew who bought my stock until after I was sued, and I met Keleher, and he told me he had sold it to Col. Britton. I swear positively I never said to him, I know you got my stock. After I was sued by the bank I met Col. Britton, and——

Q. What took place at the second conversation?

A. I says, Colonel Britton, I am sorry the old bank receiver sued me; it makes me feel very bad. He says, "I am satisfied you are an innocent party, and you did not know who bought the stock, and if your case is managed right you will be all right."

Q. Where did that take place?

A. On the corner of Pine street, in front of the bank—very near the corner.

Q. Was that after you had been sued?

A. Yes, sir; some time after.

(Counsel for plaintiff objects to all the testimony in regard to what Mr. Britton said to the defendant after the suit was brought, as irrelevant and incompetent.)

Cross-examination:

Q. Mr. Laflin, do you recollect having any conversation with Mr. Burr, previous to the sale of your stock of the National Bank of the State of Missouri, in regard to the selling of the stock?

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A. On the corner of Pine street, in front of the bank—very near the corner.

Q. Was that after you had been sued?

A. Yes, sir; some time after.

(Counsel for plaintiff objects to all the testimony in regard to what Mr. Britton said to the defendant after the suit was brought, as irrelevant and incompetent.)

Cross-examination:

Q. Mr. Laflin, do you recollect having any conversation with Mr. Burr, previous to the sale of your stock of the National Bank of the State of Missouri, in regard to the selling of the stock?

A. I remember his saying something about a letter he wrote some

time previous. He says I advised our friend Nelson to sell his stock in the old bank.

Q. Did he give you any reasons why he advised it?

A. No, sir.

Q. Did he advise you to sell your stock?

147 A. I don't remember that he did, except in a general way. For two years people had asked me why I didn't sell my stock.

Q. Did he give you any reasons at that time or any other conversation why you should sell?

A. No, sir.

At the hearing of said case the circuit judge delivered the following opinion:

148 U. S. circuit court, east. dist. Mo.

WALTER S. JOHNSON, RECEIVER, &C.,
v.
SYLVESTER H. LAFLIN AND JAMES H. BRITTON.

FEBR'Y, 1878.

1. Under the national banking act a shareholder has the right to make an actual & bona fide sale & transfer of his shares to any person capable in law of taking & holding the same, & of assuming the transferor's liabilities in respect thereto; and, in the absence of fraud, this right is not subject to a veto by the directors or the other shareholders.

2. Where such a sale of shares is made & the transfer entered on the books of the bank, the transferor ceases to be a shareholder, & is freed from liability in respect of such shares.

3. The provision of the national banking act (Rev. Stats., sec. 5139) that shares shall "be transferrable on the books of the association," construed and held not to give the directors the power to refuse to register a bona fide transfer of stock without some valid & sufficient reason for such refusal.

4. As between the seller & purchaser of shares in a national bank, the sale is complete when the certificate of the shares, with power to transfer the same on the books of the bank, is delivered to the buyer & payment therefor is received by the seller; & either the purchaser or seller may compel a registration of the transfer on the books of the bank unless the bank has some valid & sufficient ground for refusing to register the transfer.

5. The defendant Laflin, owning full paid shares of stock in a national bank of which his codefendant, Britton, was the president, employed a broker to sell the same in the market. The broker, without Laflin's direction or knowledge at the time, sold the same at the market value to Britton individually, and received in payment his individual check

149 on the bank for the purchase price, & delivered to the purchaser the share certificates, with blank powers of attorney thereon indorsed, authorizing the transfer of the shares on the books of the bank. Subsequently, after the amount of the check had been collected, but on the same day, the president, without the knowledge of Laflin or the broker, directed the book-keeper of the bank to credit his individual account with the amount of the check which he had given for the shares, & to transfer the shares (the book-keeper inserting his own name in the

blank powers of attorney as attorney to make the transfer) to Britton, "trustee," not specifying for whom he was trustee, & charging the sum to the "sundry stock account" of the bank. all of which was done. The bank, although it had not committed any act of insolvency, was then insolvent, but this fact was not known by Laflin or the broker. Held, that, although the bank, or its officers for it, was prohibited from purchasing its own shares (Rev. Stats., sec. 5201), yet that Laflin, having sold in good faith, without notice of the illegal purpose of Britton in buying the stock, or of his intended misappropriation of the funds of the bank in paying therefor, was not liable to pay back to the receiver the money received in payment for the shares.

Before DILLON, circuit judge.

Shareholder's right to transfer shares in a national bank.—Elements of a completed transfer.—Certificates.—Blank power to transfer.—Registration of transfer.—Rev. Stats., sec's 5139, 5141, 5201, 5251, *construed.*

The plaintiff is the receiver of the National Bank of the State of Missouri, appointed June 23, 1877, by the Comptroller of the Currency. That bank suspended payment & closed its doors June 20, 1877. The
150 defendant, Laflin, had for some years prior to May 16, 1877, been the owner of 85 shares of full paid stock in that bank, but was not a director. The defendant Britton was the president of the bank.

On the 10th day of May, 1877, Mr. Burr, the president of another bank, in which Laflin was a director, wrote a letter to a correspondent who was the owner of stock in the National Bank of the State of Missouri, stating (without giving the grounds of his advice) "you had better sell your stock in that bank, because you can buy it back again at a profit if you wish to do so." Mr. Burr casually showed Laflin this letter and said, "Go do likewise." An election was to be held for directors on the 29th day of May, 1877, which it was supposed would give the stock a greater value in the market before the election than it would have after that event.

Acting upon this general advice of Mr. Burr, and without personal knowledge of the actual financial condition of the bank, Laflin, on the 16th day of May, 1877, authorized one Kelleher, a broker, to sell in the market his 85 shares of stock. Keleher sold the same at private sale for $5,037.50 to James H. Britton, who then was, & for some years had been, the president of the bank. Mr. Britton gave Keleher to understand that he was buying either for himself or a party whose name he did not disclose. Britton paid Keleher the $5,037.50 by his individual check on the bank of which he was president, & Keleher thereupon delivered Britton the certificates for the 85 shares of stock assigned in blank, together with a blank power of attorney indorsed thereon, signed by Laflin, authorizing the transfer of the stock on the books of the bank. The stock certificates contained this provision: "Transferrable only on the books of the said bank in person or by attorney on the return of this certificate & in conformity with the provisions of the laws of Congress
and the by-laws which may be in force at the time of such trans-
151 fer." There were no by-laws on the subject of the transfer of stock. Keleher immediately presented Britton's check at the counter of the bank & received thereon the $5,037.50, & deposited the amount in his own name with his own bankers, the Messrs. Bartholow, Lewis & Co., upon whom he gave Laflin his own check for $4,995, being the proceeds of the sale to Britton, less his commission of 50 cents per share. Kelleher did not inform Laflin to whom he had sold the stock, &

even declined to do so. Laflin did not actually know that it had been sold to Britton until some time afterwards. Kelleher supposed Britton was making the purchase for himself or for some other person & did not know that he was buying it as "trustee for the bank." After Kelleher had delivered the stock certificates for the 85 shares assigned in blank, with the blank power to transfer indorsed thereon, & had collected the check and had left the bank, but on the same day Britton delivered the stock certificates assigned in blank, together with the blank powers of attorney signed by Laflin, to one E. Girault, the general bookkeeper of the bank, with instructions to credit from the general funds of the bank Britton's individual account with the amount paid for the stock, viz, $5,037.50, which was done, & to charge the like amount in the books of the bank to "sundry stocks account," & to transfer the 85 shares on the stock transfer book to "James H. Britton, trustee." Girault obeyed these directions. The transfer of the stock on the transfer book was accordingly made to "James H. Britton, trustee," not stating for whom he was the trustee. But in the stock ledger the transaction was entered in an account entitled "James H. Britton, trustee for bank," meaning Britton's own bank. Girault in making the transfer of the shares filled in his own name as attorney, in the blank powers of attorney signed by Laflin, and signed the transfer to Britton as trustee thus: "S. H. Laflin, by E. Girault, att'y." Girault had actual knowledge at the
152 time that this stock had been paid for in the manner hereinbefore stated. No new certificates of stock for these 85 shares were ever issued to Britton or any one else. Neither Kelleher nor Laflin knew of the foregoing directions of Britton to Girault nor what Girault did in respect thereto. Other stock to a very large amount was from time to time purchased from other persons by Britton and paid for in the same way & transferred & entered in the same manner. No formal resolution of the directors appears authorizing this to be done, but the directors knew of & assented to Britton's acts in this regard.

At the time of the suspension of the bank, June 20, 1877, there were, it seems, 4,599 shares of its own stock standing in the name of "James H. Britton, trustee," which had been purchased by him with the funds of the bank, under circumstances more or less similar to the purchase from the defendant, Laflin. All of the stock thus standing in the name of Britton, trustee, including that purchased from Laflin, was voted by him at the election of directors held May 29, 1877. Britton had been for years the owner of a large amount of stock in the bank in his own name & right, & thus owned 1,542 shares when the bank suspended. Britton's credit was good at the time of this transaction, & there was nothing in the nature of the transaction—in the fact of the purchase, the amount, or mode of payment, or the price paid—calculated to awaken suspicion on the part of Kelleher that it was not a regular transaction on Britton's own account. Laflin did not receive more than the stock was then considered to be worth in the market. Laflin did not know that the bank was insolvent, & his firm continued to deposit money with it until it closed. Kelleher testifies that he considered the bank "sound in all respects" when he made the sale to Britton. The bank had not at that time committed any act of insolvency.

153 This is a bill in equity, by the receiver against Laflin and Britton, to compel Laflin to pay back the $5,037.50, to set aside the transfer of the 85 shares of stock; to have Laflin declared to be still a stockholder in the said bank in respect of said shares, and to have Britton ordered to retransfer the shares to Laflin on the books of the bank.

The bill as to Britton stands confessed. Laflin answered, denying the material charges in the bill. Replication was filed & proofs taken. The cause is before the court on final hearing.

The following provisions of the national bank act, taken from the Revised Statutes, are those which more directly relate to the questions arising in this case:

§ 5139. The capital stock of each association shall be divided into shares of $100 each, and be deemed personal property, and be transferable on the books of the association, in such manner as may be prescribed in the by laws or articles of the association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares, and no change shall be made in the articles of association, by which the rights, remedies or securities of the existing creditors of the association shall be impaired.

Again, § 5151. The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for the other, for all contracts, debts and engagements of such association to the extent of the amount of their stock therein, at the par value in addition to the amount invested in such shares. * * *

§ 5201. No association shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be neces-
154 sary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of, at public or private sale, or in default thereof a receiver may be appointed to close up the business of the association according to section 5234.

§ 5204. No association or member thereof shall, during the time it shall continue its banking operations, withdraw or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital * * * But nothing in this section shall prevent the reduction of the capital stock of the association under section 5143.

§ 5152. Persons holding stock as executors * * or trustees shall not be personally subject to any liabilities as stockholders; but the estates & funds in their hands shall be liable in like manner & to the same extent as the testator * * or person interested in such trust funds would be, if living & competent to act & hold the stock in his own name.

§ 5210. Requires a full & correct list of all the shareholders to be kept subject to inspection of all the shareholders & creditors, & a verified copy of such list to be sent annually to the Comptroller of the Currency.

Henderson & Shields for the plaintiff.

A. W. Slayback for the defendant, Laflin.

DILLON, circuit judge:

The plaintiff is the receiver of the National Bank of the State of Missouri, appointed by the Comptroller of the Currency, June 23, 1877, the bank having suspended payment three days before. (Rev. Stat., sec. 5234.) The defendant Laflin had for some years prior to May 16, 1877, been the holder of 85 full paid shares in that bank. At the date of the suspension of the bank, the defendant, James H. Britton, was its
155 president, & had been such for some years prior to that event. On the 16th day of May, 1877, Laflin sold, through one Kelleher, a broker, the 85 shares of stock to Britton, & delivered to him the share-certificates duly assigned in blank, with powers of attorney in blank thereon indorsed, to transfer the shares on the books of the bank. Laflin's

broker who effected the sale understood that he sold to Britton individually, or to some unknown person for whom Britton acted, & he received in payment for the shares the personal check of Mr. Britton on the bank for $5,037.50, which was immediately presented & paid. Laflin did not know until some time after the transaction who had become the purchaser of his shares. After the shares had been thus delivered & paid for by Britton's check & the money received, but on the same day, they were transfered in pursuance of Mr. Britton's directions by Mr. Girault, the bookkeeper of the bank (by virtue of the powers of attorney from Laflin), to "James H. Britton, trustee," and at the same time the bookkeeper credited Britton's individual account at the bank with the amount of his check given in payment for the shares, & charged the same amount to the "Sundry stocks account" on the books of the bank. On the official stock register the shares were thus made to stand in the name of "James H. Britton, trustee," without stating for whom he was trustee. On the stock ledger of the bank the transaction was entered in an account entitled "James H. Britton, trustee for the bank." Neither Laflin's agent who negotiated the sale of the shares, nor Laflin himself had any actual notice of the manner in which the transfer of the stock had been registered, nor that the funds of the bank had been thus used to pay for it, nor of the entries in respect thereto on the books of the bank. But of all these facts Mr. Girault, the bookkeeper of the bank who made the entries & who had inserted his name in Laflin's blank power of attorney to transfer the stock, had actual knowledge at the time.

156 This is a bill in equity by the plaintiff, as the receiver of the bank, against Laflin and Britton, to compel Laflin to repay the $5,037.50 (the amount of Britton's check for the shares paid by the bank), and to set aside the registered transfer of the 85 shares on the stock transfer books of the bank.

The case presents questions of grave moment concerning the rights of stockholders & creditors in national banking associations. And if the insolvency of the bank here in question is such as shall make it necessary to enforce the individual liability of the shareholders (Rev. Stats., sec. 5151), it is important to those shareholders who made no sale of their stock to know who are shareholders with them liable to contribute to meet "the contracts, debts, & engagements of the association."

These questions principally depend upon the true construction of certain provisions in the national banking act, to which we shall refer as we proceed.

Inasmuch as this act in express terms prohibits a national bank from thus becoming a "purchaser of the shares of its own capital stock (Rev. Stats., sec. 5201), if Laflin had made a contract to sell his shares to the bank or to its president for the bank, it is plain that such a contract would have been extra vires and illegal both as respects creditors & other shareholders, & the transaction could have been impeached by the bank in its corporate capacity, or by its other shareholders even if the bank were still solvent & going on, or by the receiver as the officer appointed to wind up its affairs. (Re London, &c., Exhange Bank, Law Rep., 5 Ch. App., 444, 452; Great Eastern R'y Co. v. Turner, Law Rep., 8 Ch. Appeals, 149; Currier v. Lebanon State Co., 56 N. H., 262.)

And although Laflin did not contract to sell his shares directly to the bank or to the president for the bank, still if before the transac-
157 tion was completed as to him, he had notice actual, or constructive, that the purchase was in fact a purchase for the bank and paid for by the money of the bank, the transaction cannot stand, and the

receiver may compel him to pay back the money thus received and have him declared still to be a shareholder.

It would be easy to support these propositions by argument & by the authority of adjudged cases, but they are so plain that it is not necessary to do so. But Laflin, or his agent Kelleher, did not deal with the bank or with the president with knowledge that the latter in fact intended to pay for the shares out of the moneys of the bank. Laflin was acting in good faith. Neither he nor his agent Kelleher had any actual knowledge of Britton's purpose to turn these shares over to the bank & to pay for them out of the funds of the bank. If Laflin can be charged with notice, it must be constructive notice, arising either, 1st, from the mere fact that he was a shareholder in the bank; or, 2d, from the law imputing to him all the knowledge in this behalf which he was possessed at the time by Mr. Girault, the bookkeeper, who made the transfer of the shares on the transfer books under Laflin's blank powers of attorney, and contemporaneously made the entries on the private books of the bank which showed that Britton had been paid for the shares out of the general funds of the bank, & had acknowledged that he held the shares as the trustee of the bank.

The controlling question in the case is, whether Mr. Laflin is affected with constructive notice in one or the other of these modes. The solution of this question, in its turn, depends upon the nature & extent of the right of a shareholder in a national banking association to transfer his shares, and also upon the elements or requisites of a completed transfer, by which is meant such a transfer as shall release
158 the transferor from liability to the bank, its stockholders & creditors.

In considering these questions, our first proposition is that under the national bank act a shareholder has the unrestricted right to make an out and out bona fide and valid sale and transfer of his shares to any person or corporation capable in law of taking & holding the same & of assuming the transferor's liability in respect thereto.

The right to transfer shares in a corporation is usually recognized or given in express terms in the charter or constituent act, which also not unfrequently prescribes the manner in which the transfer shall be made. The capital stock of a corporation is invariably divided into shares of a fixed amount, for the purpose, among others, of allowing it to be readily transferred. In an ordinary partnership the consent of all the partners to the admission or retirement of a member is necessary, & every such change involves the dissolution of the old & the formation of a new partnership. But in incorporated companies this is different. Indeed, it is one of the leading objects of an incorporated body to avoid the operation & effect of this doctrine of the law of partnership. Accordingly shares in corporations are universally bought & sold without reference to the consent of the other shareholders.

The restrictions on the right bona fide to sell & transfer shares must be found in express legislative enactment or in authorized by-laws. The national banking act (Rev. Stats.. sec. 5139), by providing that shares shall "be transferrable on the books of the association in such manner as may be prescribed in the by-laws or articles of the association," recognizes the right of the shareholder to transfer his shares. There
159 is nothing peculiar in this provision. A similar provision is found in nearly all the incorporating acts & charters in this country. The right to transfer is given or implied in the section just referred to (Rev. Stats., sec. 5139). and that right the association cannot take away or defeat. It contemplates a transfer on the books of the

association, and all that the association is authorized to do is to prescribe the manner in which the transfer shall be made on its books. There is here no limitation whatever upon the right of transfer, and none exist except such as is implied from the nature of the transaction or from other provisions of the act. Another section (Rev. Stats, sec. 5201) prohibits the bank from dealing in its own shares. This implies a restriction on the shareholder from selling his shares to the bank itself or to a known trustee for the bank. And a shareholder cannot transfer his shares colorably & thereby cease to be a shareholder as respects creditors and other shareholders who would be injured by such a transfer. There may also be an implied prohibition against the right to transfer shares to an infant or person not capable in law of assuming the liabilities as well as enjoying the rights of the transferor of the shares in respect thereto, but we have no occasion to determine this point. (Rev. Stats., sec. 5139; compare ib., sec. 5152, Weston's case, Law Rep., 5, Ch. App., 614, 620.) And on general principals there may also be an implied prohibition against the transfer of shares to a pauper or insolvent person for the fraudulent purpose of escaping liability; but this is a matter that need not be now considered.

Subject, however, to such prohibitions & limitations, the right of the share-owner to make an actual and bona fide sale & transfer of his shares to any person capable in law of taking & holding the same & of assuming the liabilities of the transferor in respect thereto is plainly deducible from the national banking act itself. But if any doubt could
160 exist on this subject, it would be removed by the judicial decisions construing the provisions of the banking act in this regard & similar provisions in other legislative enactments.

In the Bank v. Lanier (11 Wall., 369) arising under the national banking act, it was expressly held by the Supreme Court of the United States that the owner of shares in a national bank may transfer the same by a delivery of the certificates, & the transferee may compel the bank to register the transfer on its books. The learned justice who delivered the opinion of the court in that case, after speaking of the additional value given to this species of property by reason of its transferable quality, says "Whoever in good faith buys the stock & produces to the corporation the certificates regularly assigned, with power to transfer, is entitled to have the stock transferred," even if the transferor is the debtor of the bank. The duty of the bank to make the transfer in such a case is held to a corporate duty, in respect of which the bank is liable for the wrongful acts & omissions of its officers.

It was urged in the argument at the bar in the present case that the provision that the shares should "be transferrable on the books of the bank" gave the directors of the bank the power to approve or disapprove of any given transfer of shares, & to register or refuse to register the same as in their judgment the interests of the bank or of the other stockholders might require. Such, however, is not the object of this very common provision in charters and acts of incorporation. The purpose of requiring a transfer on the books of the bank is that the bank may know who are the shareholders, and as such entitled to vote, receive dividends, &c., and for the protection of bona fide purchasers of the shares & of creditors & persons dealing with the bank. That such is the meaning of the provision in question, & that it does not re-
161 strict the right of the owner to transfer his stock or clothe the corporation with the power to refuse to register bona fide transfers, is settled beyond all question by numerous decisions in the English and the Federal & State courts. (Black v. Zachrie, 3 How., 483;

Union Bank v. Laird, 2 Wheat., 390; Webster v. Upton, 1 Otto, 65, 71; Bank v. Lanier, 11 Wall., 369; St. Louis., &c., Ins. Co. v. Goodfellow, 9 Mo., 149; Choteau Spring Co. v. Harris, 20 Mo., 382; Moore v. Bank, 52 Mo., 377; Hill v. Pine River Bank, 45 N. H., 300; Re London, &c., Tel. Co. Law Rep., 9 Eq., 653.)

The general subject of the right to transfer shares has been much discussed in the cases in England arising under the various companies' acts. Some of these acts give the directors express power to refuse to assent to or register transfers of shares, & some do not. The result of the English cases is that the directors cannot refuse to register a bona fide transfer of stock unless the power to do so is expressly given in the act of Parliament or the articles of association. The leading authority on this point is Weston's Case (Law Rep., 4 Ch. Appeals, 20. See also Gilbert's Case, Law Rep., 5 Ch., 559.) In Weston's Case (Law Rep., 4 Ch., 20), Lord Justice Page Wood, in considering this subject, said:

"I have always understood that many persons enter these companies for the very reason that they are not like ordinary partnerships, but that they are partnerships from which members can retire at once, and free themselves from responsibility at any time they please by going into the market and disposing of and transferring their shares without the consent of directors, or shareholders, or anybody, provided only it is a bona fide transaction; by which I mean an out and out disposal of the property, without retaining any interest in them. But if it is
desired by a company that such unlimited power of assignment
162 shall not exist, then a clause is inserted in the articles by which
the directors have powers of rejection of members. Shortridge v. Bosanquet, 16 Beav., 84, which went to the House of Lords, was a case of that kind. In the absence of any such restriction, I think it is perfectly plain that the companies' act, 1862, in the 22nd section, gives a power of transferring shares." * * * "I think there is no such power given to the shareholders, and that the shares are at once transferable under the statute, unless something is found to the contrary in the articles of association." * * * "It would be a very serious thing for the shareholders in one of these companies to be told that their shares, the whole value of which consists in their being marketable and passing freely from hand to hand, are to be subject to a clause of restriction which they do not find in the articles. And I may add that if we were to hold that such powers were vested in the directors, it would be a very serious thing for them, and would impose upon them much more onerous duties than any which are really imposed upon them by this clause." In Gilbert's Case, Law Rep., 5 Ch. Appeals, 559, 565, Lord Justice Gifford said: "I agree that according to Weston's Case, & according to what I have always considered to be the law, there is no inherent power in the directors, apart from the provisions of the articles of association, to refuse to register a proper & valid transfer, if that proper and valid transfer is submitted to them."

And although there is express power to the directors to refuse
163 to assent to or register a transfer, this power must be exercised
in a reasonable manner & bona fide, and they must have some valid & lawful reason for refusing to register. (Ex parte Penney, Law Rep., 8 Ch. App., 446; Nation's Case, Law Rep., 3 Eq., 77; Fyfe's Case, Law Rep., 9 Eq., 589; Allin's Case, Law Rep., 16 Eq., 449; Ib., 559; Weston's Case, Law Rep., 5 Ch., 614, 620; Ex parte Elliott, Law Rep., 2 Ch. Div., 104.)

In a case where the directors had power to approve or reject the transfer of shares, one of the vice-chancellors, speaking of the right of a share-owner to dispose of his shares, said:

"One of the incidents (of this class of property) is the right to transfer it, a right to make a present & complete transfer of it. It is the duty of the directors to receive & register the transfer or to furnish some (valid & sufficient) reason for refusing to transfer." (In re Stranton, &c., Co., Law Rep., 16 Eq., 559, per Bacon, vice-chancellor.)

Similar observations are made by the Supreme Court of the United States in the Bank v. Lanier, supra. Mr. Justice Davis then says, "The power to transfer their stock is one of the most valuable franchises conferred by Congress * * * It enhances the value of the stock. Although neither in form nor character negotiable paper, they (the share certificates) approximate to it as nearly as possible."

It would be a new and, I apprehend, a startling doctrine, to proclaim that the holder of shares in a corporation, where the only provision on the subject of transfers was one requiring them to be made on its books, had no right to make a complete & effectual disposition of them without the consent of the directors or other shareholders. No such power over the right of transfer has been given in the national banking act. Such a power is so capable of abuse & so foreign to all received notions & the universal practice & mode of dealing in these stocks, that it cannot, in the absence of legislative expression, be held to exist.

For these reasons & upon these authorities the proposition
164 must be considered as established that a share-owner in a national bank, while it is a going concern, has the absolute right, in the absence of fraud, to make a bona fide & actual sale and transfer of his shares at any time to any person capable in law of purchasing & holding the same & of assuming the transferor's liabilities in respect thereto, and that this right is not, in such cases, subject to the control of the directors or other stockholders.

Our second proposition is that Laflin did make a complete & effectual sale and transfer of his shares to James H. Britton individually, and that as to Laflin it was not a sale & transfer of the stock to the bank. Laflin sold through the broker or agent, Kelleher, & the latter dealt with Britton as an individual, without knowledge that Britton intended to turn over the shares to the bank, & he received in payment for the shares the personal check of Mr. Britton, and delivered to him at the same time the certificates of stock with powers of attorney in blank thereon indorsed authorizing the transfer of the shares on the books of the bank.

As between Laflin and Britton the transfer was complete by the sale, delivery, and payment, without registration, & this whether it gave Britton before the registration the legal title to the shares as against Laflin, or only a complete equitable title. (Union Bank v. Laird, 2 Wheat., 390; Webster v. Upton, 1 Otto, 65, 71; Black v. Zacharie, 3 How., 483; Bank v. Lanier, 11 Wall., 369, 377; Chateau Spring Co. v. Harris, 20 Mo., 382; Moore v. Bank, 52 Mo., 377; N. Y., &c., R. R. Co. v. Schuyler, 34 N. Y., 80; McNeill v. Bank, 46 N. Y., 325; Grimes v. Howe, 49 N. Y., 17, 22; Bank of Utica v. Smalley, 2 Cowen, 778; Bank of Commerce's Appeal, 73 Pa. St., 59; Ross v. S. W. R. R. Co., 53 Georgia, 514; Hoppin v. Buffum, 9 Rhode Is., 513; Bank of America v.
McNeil, 10 Bush (K'y), 54; Davis v. Lee, 26 Missis., 505; Ger-
165 man, &c., Ass. v. Sendmeyer, 50 Pa. St., 67; Leavett v. Fisher, 4 Duer, 1.)

That the transaction is complete as between the seller & purchaser of stock by the delivery of the certificates, with power to transfer & the receipt of payment, is fully shown by these cases, and is also evident from the fact that thereupon the each of them has the legal

right to have a transfer of the shares made on the books of the bank. The seller of the shares, for his protection against creditors of the bank in case of insolvency, may transfer the same on the books to the vendee, the purchase being authority to the seller to do this. (Webster v. Upton, 1 Otto, 65, 71.)

And for like reason the seller of shares, who has done all that is necessary to enable the purchaser to transfer the shares on the books, may file a bill to compel the vendee to record the transfer. (Shaw v. Fisher, 2 De Gex & S., 11; Cheale v. Kenward, 3 De Gex & J., 27; Wynne v. Price, 3 De Gex & S., 310; Webster v. Upton, 1 Otto, 65, 71.)

On the other hand, the vendee of the shares, where the vendor has done all that is necessary to enable the transfer to be registered, may for his own protection compel the bank to register the transfer, or hold it liable in damages for a wrongful refusal. (Bank v. Lanier, 11 Wall., 369; Hill v. Pine River Bank, 45 N. H., 300; Bank of Utica v. Smalley, 2 Cowen, 778; Commercial Bank v. Kortright, 22 Wend., 348.)

The delivery of the share certificates, assigned in blank and blank transfers, will entitle the bona fide vendee to have the transfer registered. "Whoever in good faith buys the stock and produces to the corporation the certificates regularly assigned, with power to transfer, is entitled to have the stock transferred" (per Davis, J., Bank v. Lanier, 11 Wall., 369), unless there exists some valid & legal reason
166 in favor of the bank for refusing to register the transfer, as in the case of the Union Bank v. Laird. (2 Wheat., 390.) In that case the charter gave the bank a lien for the shareholder's debt to it, and provided that "stock shall be transferrable only on the books of the bank." Under these circumstances the bank was held to have a lien on the shares to secure the share owner's indebtedness to it, which was superior to the right of the unregistered transferee of the stock. (Black v. Zacharie, 3 How., 483.)

If the foregoing propositions are sound, Britton as against Laflin had the right immediately on delivery and payment to register the transfer of the shares, & had the power to fill up the blank transfers & have the transfer registered. (Re Tahite Cotton Co., Law Rep., 17 Eq., 273; German Union Ass. v. Sendmeyer, 50 Pa. St., 67; Leavitt v. Fisher, 4 Duer, 1; Commercial Bank v. Kortright, 22 Wend., 348.) Nothing more was required to be done by Laflin or needed to enable Britton to make his title complete; and Laflin could have compelled Britton to register the transfer. If Laflin had proceeded against Britton he could have forced him to have accepted a transfer of the stock in his own name or in the name of some person capable of taking & holding the same. (Maxted v. Payne, Law Rep. 6, Exch., 132.) It would have been no answer to Laflin for Britton to have said, "I bought this stock not for myself, but for the bank." Laflin could have rejoined, "You purported to act for yourself. I supposed you were so acting, & you had no authority, & could have had none, to act for the bank."

It is held in England, under the companies acts, that the transferor of shares is liable to be treated as a stockholder until he transfers to one who is in law capable of holding and liable in respect of the shares, and whose purchase is registered, unless, perhaps, where the neglect
167 to register is entirely the fault of the corporation or its officers. (Fyfe's Case, Law Rep., 4 Ch. Appeals, 768; Lowe's Case, Law Rep., 9 Eq., 589; Shropshire, &c., R'y & Canal Co. v. The Queen, Law Rep., 7 House of L'ds Cases, 496, 513; McEwen v. West London Wharves, &c., Co., Law Rep., 6 Ch. App., 655; Weston's Case, Law. Rep., 5 Ch. Appeals, 614, 620; Gooch's Case, Law. Rep., 8 Ch. Appeals, 266; Gil-

"One of the incidents (of this class of property) is the right to transfer it, a right to make a present & complete transfer of it. It is the duty of the directors to receive & register the transfer or to furnish some (valid & sufficient) reason for refusing to transfer." (In re Stranton, &c., Co., Law Rep., 16 Eq., 559, per Bacon, vice-chancellor.)

Similar observations are made by the Supreme Court of the United States in the Bank v. Lanier, supra. Mr. Justice Davis then says, "The power to transfer their stock is one of the most valuable franchises conferred by Congress * * * It enhances the value of the stock. Although neither in form nor character negotiable paper, they (the share certificates) approximate to it as nearly as possible."

It would be a new and, I apprehend, a startling doctrine, to proclaim that the holder of shares in a corporation, where the only provision on the subject of transfers was one requiring them to be made on its books, had no right to make a complete & effectual disposition of them without the consent of the directors or other shareholders. No such power over the right of transfer has been given in the national banking act. Such a power is so capable of abuse & so foreign to all received notions & the universal practice & mode of dealing in these stocks, that it cannot, in the absence of legislative expression, be held to exist.

For these reasons & upon these authorities the proposition
164 must be considered as established that a share-owner in a national bank, while it is a going concern, has the absolute right, in the absence of fraud, to make a bona fide & actual sale and transfer of his shares at any time to any person capable in law of purchasing & holding the same & of assuming the transferor's liabilities in respect thereto, and that this right is not, in such cases, subject to the control of the directors or other stockholders.

Our second proposition is that Laflin did make a complete & effectual sale and transfer of his shares to James H. Britton individually, and that as to Laflin it was not a sale & transfer of the stock to the bank. Laflin sold through the broker or agent, Kelleher, & the latter dealt with Britton as an individual, without knowledge that Britton intended to turn over the shares to the bank, & he received in payment for the shares the personal check of Mr. Britton, and delivered to him at the same time the certificates of stock with powers of attorney in blank thereon indorsed authorizing the transfer of the shares on the books of the bank.

As between Laflin and Britton the transfer was complete by the sale, delivery, and payment, without registration, & this whether it gave Britton before the registration the legal title to the shares as against Laflin, or only a complete equitable title. (Union Bank v. Laird, 2 Wheat., 390; Webster v. Upton, 1 Otto, 65, 71; Black v. Zacharie, 3 How., 483; Bank v. Lanier, 11 Wall., 369, 377; Choteau Spring Co. v. Harris, 20 Mo., 382; Moore v. Bank, 52 Mo., 377; N. Y., &c., R. R. Co. v. Schuyler, 34 N. Y., 80; McNeill v. Bank, 46 N. Y., 325; Grimes v. Howe, 49 N. Y., 17, 22; Bank of Utica v. Smalley, 2 Cowen, 778; Bank of Commerce's Appeal, 73 Pa. St., 59; Ross v. S. W. R. R. Co., 53 Georgia, 514; Hoppin v. Buffum, 9 Rhode Is., 513; Bank of America v. McNeil, 10 Bush (K'y), 54; Davis v. Lee, 26 Missis., 505; Ger-
165 man, &c., Ass. v. Sendmeyer, 50 Pa. St., 67; Leavett v. Fisher, 4 Duer, 1.)

That the transaction is complete as between the seller & purchaser of stock by the delivery of the certificates, with power to transfer & the receipt of payment, is fully shown by these cases, and is also evident from the fact that thereupon the each of them has the legal

right to have a transfer of the shares made on the books of the bank. The seller of the shares, for his protection against creditors of the bank in case of insolvency, may transfer the same on the books to the vendee, the purchase being authority to the seller to do this. (Webster v. Upton, 1 Otto, 65, 71.)

And for like reason the seller of shares, who has done all that is necessary to enable the purchaser to transfer the shares on the books, may file a bill to compel the vendee to record the transfer. (Shaw v. Fisher, 2 De Gex & S., 11; Cheale v. Kenward, 3 De Gex & J., 27; Wynne v. Price, 3 De Gex & S., 310; Webster v. Upton, 1 Otto, 65, 71.)

On the other hand, the vendee of the shares, where the vendor has done all that is necessary to enable the transfer to be registered, may for his own protection compel the bank to register the transfer, or hold it liable in damages for a wrongful refusal. (Bank v. Lanier, 11 Wall., 369; Hill v. Pine River Bank, 45 N. H., 300; Bank of Utica v. Smalley, 2 Cowen, 778; Commercial Bank v. Kortright, 22 Wend., 348.)

The delivery of the share certificates, assigned in blank and blank transfers, will entitle the bona fide vendee to have the transfer registered. "Whoever in good faith buys the stock and produces to the corporation the certificates regularly assigned, with power to transfer, is entitled to have the stock transferred" (per Davis, J., Bank v. Lanier, 11 Wall., 369), unless there exists some valid & legal reason
166 in favor of the bank for refusing to register the transfer, as in the case of the Union Bank v. Laird. (2 Wheat., 390.) In that case the charter gave the bank a lien for the shareholder's debt to it, and provided that "stock shall be transferrable only on the books of the bank." Under these circumstances the bank was held to have a lien on the shares to secure the share owner's indebtedness to it, which was superior to the right of the unregistered transferee of the stock. (Black v. Zacharie, 3 How., 483.)

If the foregoing propositions are sound, Britton as against Laflin had the right immediately on delivery and payment to register the transfer of the shares, & had the power to fill up the blank transfers & have the transfer registered. (Re Tahite Cotton Co., Law Rep., 17 Eq., 273; German Union Ass. v. Sendmeyer, 50 Pa. St., 67; Leavitt v. Fisher, 4 Duer, 1; Commercial Bank v. Kortright, 22 Wend., 348.) Nothing more was required to be done by Laflin or needed to enable Britton to make his title complete; and Laflin could have compelled Britton to register the transfer. If Laflin had proceeded against Britton he could have forced him to have accepted a transfer of the stock in his own name or in the name of some person capable of taking & holding the same. (Maxted v. Payne, Law Rep. 6, Exch., 132.) It would have been no answer to Laflin for Britton to have said, "I bought this stock not for myself, but for the bank." Laflin could have rejoined, "You purported to act for yourself. I supposed you were so acting, & you had no authority, & could have had none, to act for the bank."

It is held in England, under the companies acts, that the transferor of shares is liable to be treated as a stockholder until he transfers to one who is in law capable of holding and liable in respect of the shares, and whose purchase is registered, unless, perhaps, where the neglect
167 to register is entirely the fault of the corporation or its officers. (Fyfe's Case, Law Rep., 4 Ch. Appeals, 768; Lowe's Case, Law Rep., 9 Eq., 589; Shropshire, &c., R'y & Canal Co. v. The Queen, Law Rep., 7 House of L'ds Cases, 496, 513; McEwen v. West London Wharves, &c., Co., Law Rep., 6 Ch. App., 655; Weston's Case, Law. Rep., 5 Ch. Appeals, 614, 620; Gooch's Case, Law. Rep., 8 Ch. Appeals, 266; Gil-

bert's Case, Law Rep., 5 Ch. App., 559; Master's Case, Law Report, 7 Ch. App., 292; Nickalls v. Merry, Law Rep., 7 House of Lords Cases, 530; Symond's Case, Law Rep., 5 Ch. App., 298; Heritage's Case, Law Rep., 9 Eq., 5.)

Assuming, without deciding, that this principle applies in all its force, under the national banking act, if Laflin had sold to an infant his liability would remain, notwithstanding the transfer was registered. (Nickalls v. Merry, Law Rep., 7 H. of L'ds Cases, 530; Symonds' Case, Law Rep., 5. Ch. Appeals, 298.) If he had sold to the bank, he would remain prima facie, if not actually, liable if the bank should so elect; and if the seller of shares remains liable under the national banking act until there is a registered valid transfer—that is, until some person succeeds to the stock who is capable of holding it & liable in respect to it—this principle will not make Laflin liable under the facts of the present case. Here the transfer was registered, but Britton, instead of registering it in his own name, as it was his duty towards Laflin to do, registered it in his name as "trustee," without Laflin's knowledge. But the act (Rev. Stats., sec. 5152) authorizes the holding of stock by a trustee. If Laflin, in order to relieve himself of liability, is bound to see the transfer of the stock registered, the registry actually made would not charge him with constructive notice that the bank was in reality the cestui que trust.

168 Britton is responsible personally, inasmuch as he had no authority to act for the bank, and as there is no cestui que trust who is liable. He is liable for the unauthorized investment & use of the trust-moneys of the bank, & can be compelled to refund it. (Great Eastern R'y Co. v. Turner, Law Rep., 8 Ch. Appeals, 149.) If it becomes necessary to assess the stockholders, he will be estopped to say that he is not individually responsible, since he was not acting by authority of any cestui que trust capable of taking & holding the shares. If the sale of this stock has been registered to Britton individually, it is clear that Laflin would not have been liable to the bank or its creditors; and as the matter now is, the bank & its creditors have every right & remedy against Britton which they would have had if the shares had been transferred to him individually, instead of to him as "trustee."

Our third proposition is, that Laflin is not liable, because the money received for the stock was unlawfully taken by Britton from the bank. The reason for this conclusion is, that Laflin parted with value—with his shares, with his power of control over them & the right to sell them to others, & had no notice at or prior to the consummation of the transaction that Britton was acting ultra vires & was misappropriating the funds of the bank. If he had dealt directly with the bank, or if he or his agents had known what took place inside the counter, before the transaction with Britton had been completed, he would have been liable.

It is urged by the receiver's counsel that Laflin had constructive notice. Mr. Shields in his argument bases Laflin's liability on the proposition that, being a shareholder in the bank, he is charged with constructive notice of the condition of the bank, & of what was done by the president in violation of law & of his official duty in respect of

169 these shares. I admit that if in a transaction directly with the bank he had received moneys to which he was not entitled, he could be made to pay back the same, irrespective of the question of knowledge on his part. (Curran v. Arkansas, 15 How., 304; Railroad Co. v. Howard, 7 Wall., 392.) But it is to be remembered in this case that Laflin is sought to be made liable in respect of the sale & transfer of his shares, which sale & transfer he had the perfect right to make, if

he acted bona fide, & he has the same right to sell his shares to another shareholder that he would have to sell them to a person not a shareholder.

Even directors have the right to make a bona fide sale of their shares, & thus get rid of liability, if they pursue the articles or charter & take no advantage of their position & commit no fraud. (Gilbert's Case, Law Rep., 5 Ch. App., 559; Ex parte Littledale, Law Rep., 9 Ch. Appeals, 257.) And shareholders in the exercise of their right to transfer shares are not bound, it seems, to take notice of irregularities on the part of the directors, in respect to the transfer of shares. (Bargate v. Shortridge, 5 House of Lords Cases, 297, 323; Taylor v. Hughes, 2 Jones & Lat., 24; Ex parte Bagge v. North Coal Co., 13 Beav., 162.) Nor are directors, much less shareholders, in the transfer of their stock bound, it seems, to take notice of the books of account of the company. (Cartmell's Case, Law Rep., 9 Ch. App., 691; Hill v. Manchester & &c. Co., 2 Nev. & M., 573; 5 Barn & Adol., 874; Haynes v. Brown, 36 N. H., 568.)

We are of opinion, therefore, that the sale & transfer of the stock as between Laflin & Britton was complete as soon as the stock was delivered assigned in blank, with the power to transfer, & payment received, & that what Britton without Laflin's knowledge afterwards did, although on the same day, in transferring the shares to himself as trustee
170 for the bank, & in reimbursing himself out of the funds of the bank, could not retroact upon Laflin, whose status had already been fixed & whose rights had already been acquired. (Bank of America v. McNeill, 10 Bush, (K'y), 54, 58.)

Mr. Henderson's argument for the receiver went mainly upon the ground that Laflin was chargable through Mr. Girault with constructive notice of Britton's wrongful acts in the purchase of these shares & in the use of the bank's money to reimburse himself therefor. This argument rests upon these propositions: 1st. That the sale was not complete until the transfer was registered; that in making the transfer, Girault, although acting under Britton's directions, was solely Laflin's agent (by virtue of his inserting his name in the blank power of attorney), & that inasmuch as Girault knew of Britton's acts in directing the transfer for the benefit of the bank & in paying himself for the purchase-money out of the general means of the bank, the law imputes this knowledge to Mr. Laflin. The first branch of this proposition is inconsistent with the one which we have above attempted to maintain, viz, that the transaction between Laflin & Britton was complete without registration of the transfer, & that it is equally complete as to the bank, unless the bank had some valid reason for refusing to register the transfer. Britton had the right to register the purchase in his own name; he was in good credit with the bank & in the community. He was not then known to be insolvent; indeed it is not shown by the proofs that he is now insolvent; Laflin could have compelled him to register the transfer in his own name. In the eye of the law the transfer to Britton as "trustee" is a transfer to Britton individually, for, as above shown, Britton
171 could not set up his ultra vires acts to defeat his personal responsibilities. (Ashurst v. Mason, Law Rep., 20 Eq., 225; Ex parte Littledale, Law Rep., 9 Ch. App., 257.)

If Laflin had a completed right immediately on receiving payment for the shares to have Britton register the transfer of the shares, & if immediately on such payment Britton had the right to register the transfer to himself, & if the bank could not have resisted Laflin's application to compel a registration of the transfer to Britton, it is obvious that notice subsequently received by Laflin personally or through an

agent would be immaterial. If this view is sound, it is unnecessary to decide the further question whether Girault, in consequence of his relations to Britton, & the fact the he acted as his servant & implicitly obeyed his directions, is to be regarded in making the formal act of transfer on the books as the agent of Laflin, in such a sense that knowledge acquired by him from Britton is to be imputed to Laflin. It deserves consideration whether, under the circumstances, Girault was Laflin's agent so as constructively to affect Laflin with notice of what was being done, not in the necessary or lawful execution of his authority, but in violation of that authority & in hostility to his rights as well as those of the bank. These are the positions taken by Mr. Slayback in Mr. Laflin's behalf, & they certainly have great force. For in this view, if the name of some one outside the bank, having no knowledge of what was going on inside the bank, had been filled in by Britton as the attorney to make the transfer, or if Britton had filled in his own name, Laflin would not be liable. It is certainly extremely narrow ground to make Laflin's liability depend upon the accident whose
172 name shall be used to make the formal transfer, & upon what knowledge of the interior workings of the bank such person may happen to possess, especially in view of the custom to transfer stock in blank through many hands before any registry is made.

It was strongly urged at the bar by Mr. Henderson, for the receiver, that the foregoing views of the right of the shareholder to transfer his shares will have the effect to permit transfer to persons not able to respond to the double liability imposed on shareholders, and thus work an injury to the solvent shareholders & to creditors. But we must hold to the absolute right of the shareowner to transfer his stock in good faith, or the alternative that the directors may have the right to refuse their assent to such transfer, thus putting a shareholder in their power. Not a syllable can be found in the banking act giving the directors such a power; while on the other hand the right to transfer shares is expressly recognized. If it is desirable for the security of the shareholders or creditors that the existing members should, through the directors, have a veto on the right of a shareholder to transfer his shares, such a power must be plainly conferred. It has not been given, & cannot therefore be held to exist.

It is proper to remark, in order to preclude erroneous inferences from the views here maintained, that it is probable that the unrestricted right to transfer has reference to transfers in solvent & going concerns, & are not intended to enable shareholders to escape from liability where the association has committed an act of insolvency, or has ceased to be a going concern. (Atlin's Case, Law Rep., 16 Eq., 449, per Lord Chancellor Selbourne; Chappell's Case, Law Rep., 6 Ch. App., 902.)

While we maintain the right of a shareholder to dispose of his
173 shares absolutely, by an out & out sale & registered transfer, and thus escape liability, provided the sale is made bona fide and the purchaser is in law capable of assuming the liabilities of the transferor, yet this does not involve the right to transfer shares for a fraudulent purpose, or under circumstances which the transferor knows will make the transfer, if it is sustained, work a fraud upon the other shareholders or upon the creditors of the bank.

The result is that there must be a decree dismissing the bill as to Laflin, & as the bill is not framed for separate relief against Britton, dismissing the same as to him also, but without prejudice.

Bill dismissed.

174 THE UNITED STATES OF AMERICA,
Eastern District of Missouri, set.:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify that the above and foregoing is a true and complete transcript of the record and proceedings had in case No. 1092 of Walter S. Johnston, rec'r, &c., complainant, vs. Sylvester H. Laflin et al., defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name, and affix the seal of said court, at office in the city of St. Louis, this 26th day of March, A. D. 1878.

[SEAL.]

M. M. PRICE, *Clerk*,
By A. P. SELBY, *Deputy*.

(Indorsement on cover:) No. 458. Walter S. Johnston, receiver of the National Bank of the State of Missouri, appellant, vs. Sylvester H. Laflin & James H. Britton. E. Missouri C. C. U. S. Filed 3rd September, 1878.

SUPREME COURT U.S.
FILED
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JAMES H. MCKENNEY, CLERK

UNITED STATES SUPREME COURT

No. 458.

OCTOBER TERM, 1880.

WALTER S. JOHNSTON, Receiver of the National Bank State of Missouri, Appellant,

vs.

SYLVESTER H. LAFLIN and J. H. BRITTON, Resps.

Appeal from the Circuit Court of the United States Eastern District of Missouri.

BRIEF AND STATEMENT OF PLAINTIFF.

HENDERSON & SHIELDS,
Solicitors for Appellants.

UNITED STATES SUPREME COURT

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vs.

SYLVESTER H. LAFLIN and J. H. BRITTON, Resps.

Appeal from the Circuit Court of the United States Eastern District of Missouri.

STATEMENT OF THE CASE.

PLEADINGS.

This was a bill in equity, by the Receiver of the National Bank of the State of Missouri, against Sylvester H. Laflin and James H. Britton, alleging that said bank was organized on October 9th, 1866, under the National Banking Act, and did business as such in the City of St. Louis, Missouri, until June 20th, 1877, when it closed its doors and suspended payment. That James H. Britton was the president of said bank, and acting as such on May 16, 1877. Defendant Laflin on that day was the owner of eighty-five (85) shares of the capital stock of said Association, which stock appeared in Laflin's name on the books of said association as owner. That the nominal value of said shares was $100 each. That on May 16th, 1877, Laflin, the stockholder, and Britton the president, entered into an agreement whereby Laflin sold and transferred his eighty-five shares (85) shares of stock to Britton as trustee for said bank, and delivered to Britton his certificates of stock, duly assigned to said Britton as trustee, as aforesaid; and transferred said stock to said Britton as trustee, on the books of

said association. That said Britton, without authority of law, assumed to act as the agent and trustee of said bank in the purchase of said stock, and paid to defendant Laflin, out of the funds of the said bank, five thousand and thirty-seven dollars and fifty cents ($5,037.50) therefor.

The bill further alleges that at the time of said pretended purchase and transfer of said stock to said Britton, as trustee of said bank, the said bank was *largely indebted to its depositors and other creditors, and greatly in excess of its available assets and was wholly insolvent.* That said indebtedness of said bank, then existing, still exists, and said bank is *still wholly insolvent and unable to pay its depositors and other creditors.*

The bill further alleges that the sale of stock by Laflin to Britton, as trustee for the bank, was unauthorized by law and void; and in contravention of the provisions of the National Banking Act; and that said pretended purchase of stock and payment therefor, out of the funds of the said bank, was an illegal appropriation by the said Britton, president, of the funds held in trust by said banking association, for the payment of its creditors, and a misapplication thereof to the use and benefit of the said defendant, Laflin, a stockholder; and was the withdrawal of so much of its capital for Laflin's use and benefit, and therefore inequitable and void as against the creditors and other stockholders. That said stock now stands on the books of the said associates in the name of James H. Britton, trustee as aforesaid.

The bill further alleges that on June 23, 1877, the Complainant was by the Comptroller of Currency of the United States, appointed receiver of said bank; that he accepted the trust, and was discharging the duties devolving upon him by law as such. That immediately upon discovering the facts in the case, said Receiver repudiated said illegal transactions, and demanded the money from said defendant, Laflin, which he refused to refund. The bill, therefore, prays that said sale and transfer of stock be declared *null and void*, and Laflin be declared still a stockholder in said bank to the extent of eighty-five (85) shares of stock. That the money received by Laflin, out of the trust frunds of said bank, be charged in his hands with the trust, and said defendant, Laflin, ordered and adjudged to refund said sum, with interest from the time he received the same, at six (6) per cent, to the Receiver, for the use and benefit of the creditors of said bank; and that Britton be ordered to re-transfer said stock to defendant, Laflin, on the books of the association, and for general relief.

The bill was sworn to by the Receiver, and subpœna in

chancery issued to the defendants to appear at the October rules, 1877, which was duly served.

Defendant, Laflin, appeared and filed his separate answer, denying that he entered into an agreement whereby he agreed to sell and transfer his eighty-five (85) shares of stock, in said bank to Britton as trustee of said bank.

Denying that he delivered to said Britton, as trustee, his certificates of said stock, or that he transferred said stock as aforesaid, on the books of the said association. Denying that Britton paid to said defendant, out of the funds of the said bank $5037.50 therefor. Denying that he received said sum as consideration of the transfer of said stock to Britton as trustee of said bank. And for his further, distinct, separate and more perfect answer, defendant, Laflin, avers that being the owner of the said eighty-five (85) shares of stock, on the 15th day of May, 1877, he was offered therefor by a broker, the sum of $4,495, or $59.50 a share, net, which sum was paid to defendant by said broker, one P. F. Keleher, in said Keleher's check upon the banking house of Bartholow, Lewis & Co., which was paid, and defendant gave said Keleher the certificates of his said stock, signing a blank power of attorney therefor, as is usual and ordinary in such sales, to have the stock transferred according to the rules of the said association, and not otherwise, *to the purchaser thereof, whoever he might be;* but not for the purpose of making any wrongful, unlawful or improper disposal of such power. That defendant had no dealings with James H. Britton, or with James H. Britton as trustee for the bank. That when defendant got his price and surrendered his certificates of stock, he did so in good faith, and got the regular fair market price for said stock,and had no notice that said shares of stock were for the bank or James H. Britton, trustee thereof, or that any unauthorized use of funds of any person or corporation was contemplated. That defendant had the right to sell his stock, did sell it in the regular customary method of making such sales, without any wrong in himself or notice of any wrong of others. And having fully answered, asked to be dismissed with his costs.

To this answer the Receiver filed a replication, denying the facts stated in said answer, confirming the allegations of his bill and asking judgment as in said bill prayed.

The bill stands confessed as to defendant Britton. On the hearing of the case the Court decreed that the bill be dismissed as to defendant Laflin, and as to defendant Britton without prejudice, giving judgment for cost, against complainant. From this judgment, complainant asked an appeal to this Court which appeal was allowed and bond given therefor in accordance with the order of this Court.

FACTS DEVELOPED IN EVIDENCE.

The National Bank of the State of Missouri, was organized in October, 1866, with a capital stock of $3,410,300. Sylvester H. Laflin was a stockholder in said bank since the year 1868. That in 1872 he was judge of election and voted for James H. Britton as a director in said bank, and knew that he was the president thereof, and also knew that no election of directors for the said bank, or change of its officers had taken place between 1872 and May, 1877, but he never examined the condition of said bank. That on the 31st day of December, 1875, a circular letter was issued by said bank, signed by the cashier thereof, to all stockholders, notifying them the board deemed it expedient to reduce the capital stock of said bank to the sum of two million five hundred thousand dollars ($2,500,000). The said circular contained this provision—

> "Third. The amount of stock needed to be bought and cancelled to affect the reduction, can be obtained at rates less than par. The difference between a rate at which it may be bought, and the par value, will be constitute a fair apparent profit to the bank, and through it to the shareholders."
> [Record page 46.]

The said circular requested the vote of each stockholder on this proposition to purchase and reduce the stock. The defendant, Laflin, and his agent, the broker Keleher, had knowledge of the issuance of this circular, and that large quantities stock of said bank were bought under said circular by said bank. [See Record, pages 51, 64 and 65.] Laflin voted aye as a stockholder, to purchase said stock in accordance with said circular. [See Record, pp. 64 and 65.] This enormous amount of nine thousand one hundred and three (9103) shares of stock had been purchased by the said bank, principally through James H. Britton, as trustee, on the 27th day of April, 1876, and was on that day, by the board of directors of said bank declared cancelled. The matter of the purchase of this stock by the bank was a matter of common notoriety among the stockholders of the bank, as they were all notified by the circular of the proposed purchase by the bank, and Laflin himself voted "aye" on the proposition. All of this stock had been transferred to James H. Britton as trustee, and stood on the books of the bank in the name of James H. Britton, trustee for the bank. All stocks that had been taken for bad debts from time to time, as allowed by law, had been transferred to the same account. [See Record, pp. 25, 26, 29, 30, 33, 36 and 37.] And dividends on it were paid to the bank [See Record p. 41.] Notwithstanding which, Britton voted it illegally and wrongfully. [See Record pp. 35 and 36.]

In the cancellation of the nine thousand one hundred and three (9103) shares, the bank still held twenty-seven (27) shares more than necessary to make that reduction, remaining in the name of James H. Britton, trustee, and subsequently to that cancellation of stock, Britton continued to buy shares of stock for the bank. [See Record p. 30].

This stock held by James H. Britton, trustee, was voted by him at the stockholder's meetings, and at the last election held by the stockholders of the said bank, on the 29th day of May, 1877, with the knowledge of the other directors of the said bank. [See Record, pp. 30 and 31.]

Between the 27th day of April, 1876, and the 16th day of May, 1877, (the day Laflin sold his eighty-five (85) shares of stock), Britton had purchased as trustee for said bank, and paid for with the funds of the bank, nineteen hundred and twenty-one (1921) more shares of stock; and between the 16th day of May, 1877, and the 20th day of June, 1877, he purchased and paid for with the funds of the bank, twenty-six hundred and seventy-eight (2678) more shares, the bank owning, at the time of its suspension forty-five hundred and ninety-nine (4599) shares, which had been purchased by Britton, the president of the bank, and stood on the books in his name as trustee for the bank, and had been paid for out of its general funds. [See Record pp. 92 and 93.]

It does not appear at what time the bank ceased buying its shares openly, as it did before the 27th day of April, 1876, and commenced purchasing through Britton individually. But the record developes that between the 1st day of January, 1876, and the 20th day of June, 1877, one year and a half, one million, three hundred and seventy thousand, two hundred dollars ($1,370,200) of the capital stock of this bank was purchased in the open market, being thirteen thousand seven hundred and two (13,702) shares; ninety-one hundred and three (9,103) of which were confessedly bought for the bank up to April, 27, 1876, and the balance by Britton, who was president of the bank, made the transactions at the bank's office, and paid for the stock by his individual check on the bank, which the bank honored out of its general funds.

The evidence shows that Laflin and Keleher both had notice of the fact that the bank had been buying its stock for the purpose of reduction in accordance with the circular above referred to. Laflin knew there had been no election of directors in said bank since 1872 (he was judge of that election), and he voted for Britton as a director at that election, and knew that Britton was the President of the bank and had been for a long time previous (see Record, pp. 66 and 67). He also knew before his sale that there was soon to be an election of

directors in said bank, in May, 1877, an unusual time. (See Record, pp. 59 and 63.

On the 10th day of May, 1877, William E. Burr, who was President of the St. Louis National Bank, of which bank Laflin was a director, wrote a letter to James Nelson at Boonville, Missouri, who was a stockholder of The National Bank of the State of Missouri, and who had sent Burr authority to represent his shares at the coming election. In which letter Burr said (see Record, p. 92).

> "I fear, however, that your desire for a change of management is not likely to be gratified; the grip is yet too strong. Sell your shares promptly, and I think you will be able to buy them back in a short time and make a fair profit. I do not know what they can be sold for now."

Mr. Laflin happened to be in Burr's office when he finished this letter. He read the letter to Laflin and said "now go and do likewise" (See Record, p. 91).

Laflin admits that he had been advised by friends in commercial circles, to get rid of his stock prior to the date of the sale thereof (see Record, page 61).

A. S. Ackerson, Laflin's confidential clerk, testifies that he advised Laflin to sell that stock (see Record, page 78).

Laflin and Ackerson both testified that Laflin was a man of means, and that there was no necessity for the sale of stock to raise money (see Record, pages 62 and 78). Under these circumstances, on the 16th day of May, 1877, Laflin authorized one Keleher, a broker, to sell, in the market, his eighty-five (85) shares of stock. Keleher sold the stock to Britton at the bank's office, forty-five (45) shares at fifty-nine and one-half (59 1-2) dollars and forty (40) shares at fifty-nine (59) dollars, amounting in all to the sum of five thousand and thirty-seven dollars and fifty cents ($5,037 50).

Laflin delivered the certificates of stock to Keleher, signed his name, in the presence of A. S. Ackerson, at the bottom of the power of attorney to assign said shares of stock, on the back of the certificates, leaving blank the name of the person to whom the stock was to be transferred, and the name of the attorney whom he authorized to transfer said stock on the books of the bank. Keleher, the broker, delivered the certificates of stock, with the power of attorney executed in blank, to Britton, and received from Britton his individual check on the National Bank of the State of Missouri, payable to the order of Keleher & Co., for five thousand and thirty seven dollars and fifty cents ($5,037 50) in current funds and presented the check at the counter of the said bank and received the money

instead of putting it through the clearing house [as he testifies he would have done if Britton had signed as president] (see Record pp. 49, 52) and re-deposited it in the banking house of Bartholow, Lewis & Co., and drew a check on the said last named bank, to the order of Laflin the same day for four thousand nine hundred and ninety-five dollars ($4,995) being the amount received from Britton for said stock, less fifty cents (50c.) a share, the usual commission charged for the sale of stock by brokers, which check Laflin collected.

In order to pay the check which he had given to Keleher May 16, 1877, Britton ordered the general book-keeper of the bank to place to his credit, out of the funds of the bank, enough money to pay for said stock so purchased by him of Laflin, which was done. [See Record, pp. 9, 31, 32 and 46].

There is no controversy, but that the funds which paid Britton's check to Keleher were the funds of the bank, and were placed to Britton's credit for the purpose of paying such check. And the "sundry stocks" account of the bank, [which was an account containing everything in the nature of stocks, of any incorporated company, which was owned by the bank, and which represented the stocks held and owned by the bank] was debited with the amount (see Record, pp. 11, 56 and 57,) and the transaction was entered on the general stock ledger of the bank, to the credit of "James H. Britton, trustee for the bank" (see Record, p. 12).

The certificates of stock so delivered by Laflin to Britton contained the following words:

> "Transferable only on the books of said bank, in person, or by attorney, on return of this certificate, and in conformity with the provisions of the law of Congress, and the by-laws which may be in force at the time of such transfer."

The said certificates of stock, with the power of attorney on the back thereof, which was signed by Laflin, leaving the name of the party to whom the shares were to be transferred and the name of the attorney to transfer the said stock on the books of the bank in blank, were handed by Britton on the same day to Eugene Gerault, general bookkeeper of the bank, with instructions to transfer the same to the account of James H. Britton, trustee for the bank. Gerault wrote his own name in the blank, as attorney to transfer said stock (see Record, p. 57); then transferred the stock on the transfer book as follows:

> "For value received, I, S. H. Laflin, hereby assign and transfer to J. H. Britton, trustee, 85 shares of the capital stock of the National Bank of the State of Missouri, on which $8,500 have been paid. In testimony whereof, I set my hand this 16th day of May, 1877. S. H. LAFLIN, by GERAULT, Attorney."

No new certificates of stock were issued to Britton as trustee of the bank. Keleher says he did not know for whom Britton was buying; and Laflin testifies that Keleher declined to tell him to whom he sold the stock. Laflin testifies he did not know who bought the stock, or that it was paid for with the bank's money. Britton testifies that on the day, or the day after he purchased Laflin's stock, he met Laflin on the street, when Laflin said he was sorry he had sold that stock, "but those men down there said I must sell, and would not let me rest." He further said: "I know you got it." (See Record, p. 89.) Laflin says the conversation did not take place until at least ten days after the sale (see Record, p. 97), and that he did not tell Britton "I know you got." Keleher testifies that Laflin met him six or eight weeks after the sale and said "I know who you sold that stock to as well as you do. You sold it to Colonel Britton, and I could have gotten as much for it as you did." (See Record p. 53, 54 and 55.) Laflin positively denies this conversation with Keleher.

Soon after the sale of Laflin's stock, Laflin wrote to a friend of his, a Mr. Smith in Chicago, that he had sold his stock, and Smith telegraphed to Laflin to sell his, which he did through Keleher to Britton. (See Record, pp. 62 and 66).

It may be stated generally that Laflin had no actual knowledge of what was done by Keleher, Britton or Gerault, in reference to his stock, after he delivered the certificates to Keleher, nor did he have any actual knowledge of the entries on the books of the bank, except such notice and knowledge as would arise from the facts herein stated. No formal resolution of the directors, authorizing Britton to purchase the stock of the bank was passed; but the directors knew of and assented to his acts in this regard.

The bank is admitted by the pleadings to have been wholly insolvent at the time of this sale, and that its liabilities largely exceeded its assets. The testimony shows that at the time Laflin received about fifty-nine dollars ($59) per share of one hundred dollars ($100) each. Gerault, Laflin's attorney to transfer the stock, knew that the stock was bought by Britton as trustee for the Bank, and was being paid for by Britton, out of the general funds of the bank, and was transferred to Britton as such trustee, and had full knowledge of all the facts and made the transfers on the authority of Lafiin's signature to the blank power of attorney.

This is the substance of facts developed in evidence in the trial of this case.

ASSIGNMENT OF ERRORS.

The appellant respectfully assigns the following grounds as error, for reversal for the Court below, to wit:

The Court erred in its findings of facts from the testimony.

The Court erred in finding that the defendant, Laflin, did not know until after the transaction, who purchased his stock.

The Court erred in finding that Laflin did not know that the bank was insolvent at the time of the sale of the stock.

The Court erred in finding that Laflin did not know, nor have notice that the purchase was made by Britton for the bank, and that the bank's funds were used to pay for said stock.

The Court erred in finding that the bank had comitted no act of insolvency.

The Court erred in its decision on the following questions of law, to wit:

In holding that Laflin being a shareholder in the bank, was not chargeable with notice of the use of its trust funds for his benefit, by Britton, the president of the bank.

In holding that Laflin was not chargeable with notice of all things known to Gerault, his attorney, whom he empowered to transfer his shares on the transfer books of the bank.

In holding that Laflin made a complete and effectual sale and transfer of his shares to Britton, individually: and that as to Laflin it was not a sale and transfer of the stock to the bank.

In holding that Laflin could have compelled the bank to make the transfer to Britton when the same had been paid for illegally, out of the general funds of the bank.

In holding that, as to the trust funds of the bank, Laflin is to be considered a *bona fide* purchaser for value, without notice.

In holding that the Receiver, who represents the bank, the stockholders and the creditors of the bank, could not follow this trust fund in the hands of Laflin and recover the same.

In holding that through the illegal and wrongful act of the president of the bank (which was admitted to be then insolvent) Laflin, the shareholder, can not only legally receive the benefit of the trust fund, which is liable primarily to the creditors of the bank, but relieve himself from his double liability on his stock to such creditors.

The Court erred in dismissing the bill as to Laflin, and as to Britton without prejudice.

The Court erred in not granting the relief asked by the Complainants in this case. Appellant respectfully asks a decree in this Court, to which he is entitled on the facts in the record.

POINTS AND AUTHORITIES.

FIRST. We respectfully insist that even if Laflin had no actual knowledge of the transactions complained of he cannot take the benefit of the assets of the insolvent corporation of which he is a member, as against the creditors and other stockholders, through the illegal acts of the president of the corporation.

SECOND. That the stock in the National Banking Association can be transferred only on the books of the bank, and that it was the duty of Laflin to see that his transferee was capable of taking the stock, and responding to his liability as a stockholder; and that the transfer not being complete until made on the books of the bank, Laflin had notice, through Gerault, his transfer agent, that Britton, the president, was buying for the bank and illegally using its trust funds to pay for the stock.

THIRD. That Laflin could not knowingly transfer his stock to the bank, it being prohibited by the statute. And that the circumstances developed in evidence were such as put Laflin on enquiry, as to whom he was selling and without imputing to him the knowledge of Gerault his transfer agent, he is chargeable with notice that his sale to Britton, trustee, was illegal.

I.

1. The complainant is Receiver of the National Bank of the State of Missouri, and as such can annul any illegal act of the officers of the bank, in the interest of the creditors and stockholders. He represents the Bank, its creditors and also its stockholders and can maintain any action against the defendants, that the Bank, its creditors or other stockholders could maintain.

Talmage vs. Pell, 7 N. Y. 328.
Case vs. Terrell, 11 Wall. 199.
Kennedy vs. Gibson, 8 Wall. 21.
Gillett, Receiver, vs. Moody, 3 Comst. 479.
Jaycox vs. Green, 7 Bankcy Reg. 578.
Thompson on Liabilities of Directors, p. 377.
Shipman, Trustee vs Ætna Ins. Co., 29 Conn. 245.
Hays vs. Kenyon, 7 R. I., 136.

2. The capital stock, and after insolvency the assets and property of the Bank, constitute a trust fund for the benefit of the creditors of the association, and as such, they have a lien upon it in equity. If diver-

ted they may follow it as far as it can be traced and subject it to the payment of their claims, except as against holders who have taken it *bona fide* for a valuable consideration and without notice of its trust character. This principle would entitle complainant to recover in the absence of the provisions of the National Banking Act, quoted above.

Sanger vs. Upton, 91 U. S. (1 Otto) 56-59.
Upton, Assignee, vs. Tribilcock, 91 U. S. (1 Otto) 45.
Burke vs. Smith, 16 Wall. 390-4.
New Albany vs. Burke, 11 Wall. 96-106.
Sawyer vs. Hoag, 17 Wall. 610.
Mumma vs. Potomac Co., 8 Peters, 281.
Oliver vs. Pratt, 3 How. (U. S.) 333-401.
Curran vs. State of Arkansas, 15 How. 304.
Railroad Co. vs. Howard, 7 Wall. 392-409.
Gillett, Receiver, vs. Moody, 3 Comst., 479.
Bartlett vs Drew. 59 N. Y. 587.
Nathan vs. Whitlock, 9 Paige 151.
Scott vs. Eagle Fire Co., 7 Paige, 198.
Reed vs. Bank of Newburgh, 6 Paige, 337.
Bank vs. St. John, 25 Ala. 566.
Morton vs. Zellerbach, 38 Cal. 301.
Currier vs. Lebanon Slate Co., 56 N. H. 262.
Farmers and Mechanics Nat. Bank, vs. King, 57 Pa. St. 202.
Hale vs. Republican Bridge Co. 8 Kan. 466.
Wood vs. Dummer, 3 Mason, 308-311.
Gratz vs. Redd, 4 Ben Mon. 262.
Thompson on Liability of Stockholders, secs. 3, 10, 13, 18.
Thompson on Liability of Officers, 397.
Perry on Trusts, S. S. 217-18-19-20-21-22-23-828.

3. Shareholders are conclusively charged with notice of the trust character of the capital stock and assets of the association, as against creditors or other stockholders, they cannot hold as to such trust funds the relation of innocent purchasers. They are privies to the trust, and if by any means they become possessed of this trust fund, they hold it subject to all equities of the creditors, and other stockholders; and Equity will compel them to account to the Receiver for all such trust property.

Woods vs. Dummer, 3 Mason, 308.
Gratz vs. Redd, 4 Ben. Mon. 262.

Adler vs. Milwaukee Patent Brick Co. 13 Wis. 62.
Thompson on Liability of Stockholders, sec. 13-18.
Sawyer vs. Hoag, assignee, 17 Wall. 610.
Curran vs. Arkansas, 15 How. 304.
Bartlett vs. Drew, 57 N. Y. 587.
Webster vs. Upton, Assignee, 91 U. S. (1 Otto) 65-69.
German Savings Bank, Wulfekuhler, 19 Kansas, 60.

a. The stockholder is an integral part of the corporation, and so far as creditors are concerned he is as much bound, to the extent of his liability, as the corporation.

Hightower vs. Morton, 8 Ga. 492.
Blake vs. Blake, 19 Iowa, 268.
Thomp. on Liab. of Stock. Sec. 1, Note, p. 4, Secs. 326, 329.
Slee vs. Bloom, 20 Johns 669.

b. On this principle a stockholder is not entitled to notice of application for an assessment on his stock to the District Court by a assignee after insolvency.

Sanger vs. Upton, 91 U. S. (1 Otto) 56, 59.

c. On this principle statutes permitting execution on judgment against the corporation to be levied on property of stockholders, are based, and have been held constitutional.

Thompson on Liability of Stockholders, Secs. 326-333.

d. So judgments regularly obtained against corporations are conclusive against the stockholder in fixing his *pro rata* liability to judgment creditors.

Thompson on Liability of Stockholders, Secs. 329, 337.
Merrell vs. Bank Suffolk. 31 Maine 57.

e. The stockholder has a right of access to the books of the corporation and to know how the affairs have been conducted. He assists in the selection of its directors, and it is his duty to interest himself in the management so far as to see that its affairs are honestly conducted.

State *Ex rel.* Martin vs. Bienville Oil Works, 28 La. Ann. 204.
Cockburn vs. Union Bank, 13 Louisana An. 289.
Upton, Assignee vs. Englehart, 3 Dill, 494.
Farrer vs. Walker, 3 Dill. 506.

f. Laflin did not part with any value. The corporation was wholly insolvent; his stock possessed no value. The bank got nothing for its money. Laflin did not change his position for the worse by the sale, nor put himself in a position that cannot be retracted. Therefore he does not occupy the position of *bona fide* purchaser in point of fact.

2 Ldg. Cases, Eq. pp. 75. 82, 83.
Head vs. National Bank, 42 Miss. 136.
Curran vs. Arkansas, 15 How. 304.
Wright vs. Petrie, 1 Sm. & M. Chy. 282.
Barnes vs. Barnes, 23 Miss. 136.

4. Laflin is chargeable with notice of the provisions of the National Bank act. The purchase by Britton for the bank and with its funds was prohibited, and *ultra vires*, and the result a withdrawal during the continuance of the banking operations of a portion of its capital which was also prohibited by statute. Therefore Laflin cannot plead ignorance. He is chargeable with notice of acts done for his benefit by his selected mandatary in violation of the act constituting his corporation.

Rev. Stat. U. S. Secs. 5201, 5204.
In re National Fund Association, 10 Chy. Div. 118.
Bowden vs. Santos, 1 Hughes, 158.
Gratz vs. Redd, 4 Ben. Monroe, 262.

5. Laflin is bound to refund to the creditors of this bank for this trust fund. even if he had no notice, on the well known principle that when one of two innocent parties must suffer through the acts of a third person, the loss must fall on him who has put it in the power of such third person to injure the other. He is estopped to set up his innocence or want of knowledge against the creditor, as Britton was his own chosen representative.

Thompson on Liability of Stockholders, Sec. 240, p. 306.
Hern vs. Nichols, 1 Salk. 289.
Putnam vs. Sullivan, 4 Mass 45.
North River Bank, vs. Aymar, 3 Hill 262.
Griswold vs. Haven, 25 N. Y. 595.

II.

1. By statute Laflin was liable to the creditors to an amount equal to his stock and was subject to assessment to pay the same.

Revised Stat. U. S. sec. 5151.

His name appeared as a stockholder on the stock register, reqnired by law to be kept public by the Bank, and creditors were induced to credit the bank on the strength of his name.

Revised Statutes U. S., sec. 5210.
Rosevelt vs. Brown, 11 N. Y. 148.
McGruder vs. Colston, 44 Md. 349.

The transfer of the stock avoiding this liability could not be complete until made on the books of the bank. This was required by its organic law. It was so expressed on the face of the certificates transferred, and in the power of attorney given by Laflin to make the transfer.

Revised Stat. U. S. 5139.
Brown vs. Adams, 5 Bissell 181.
Bowden, Receiver, vs. Merchants' Bank, 1 Hughes 309.
Union Bank vs. Laird, 2 Wheat 390.
Brent vs. Bank Washington, 10 Pet. 595–615.
Black vs. Zacherie, 3 How. 583.
Bowden vs. Santos, 1 Hughes, 158.
State Ins. Co. vs. Sax., 2 Tenn. Chy. 507.
Meyer vs. Second Nat. Bank, 57 Ind. 198–209.
Pinkerton vs. Manchester & L. R. R. 42. N. H. 424.
Hale vs. Walker, 31 Iowa 344.
Sabin vs. Bank Woodstock, 21 Vt. 353.
Shipman vs. Ætna Ins. Co, 29 Conn. 245.
Marlbro Manfg. Co. vs. Smith 2 Conn. 579.
Northrup vs. Newtown Bridge Co., 3 Conn. 545.
Wheelock vs. Kost, 77 Ill. 296.

2. This is so as to the bank, whether the signing of the power to transfer in blank and delivery of the certificates conferred only an equitable title to the transferee, as held in Union Bank vs. Laird, and cases cited *supra*, or whether it conveyed both the legal and equitable title as between the parties.

N. Y. & N. H. R. R. vs. Schuyler, 34 N. Y. 8–80.
McNeil vs. Tenth Nat. Bank, 46 N. Y. 325–31.
Bank Utica vs. Smalley, 2 Cow. 770.
Grymes vs. Hone, 49 N. Y. 17.
Cushman vs. Thayer Mnfg. Co., 76 N. Y. 365.

3. If the transfer was not complete as to the bank, till made on

the transfer books, it was not complete as to the creditors of the bank.

Thompson on Liability Stockholders, sec. 220.
Bonsanquet vs. Shortridge, 4 Exch. 699.
Walker's case, L. R. 2 Eq. 554.
Burke vs. Smith, 16 Wall. 390.

4. If the transfer was not complete till registered, then Laflin is bound by the knowledge of Gerault, his transfer attorney, upon familiar principles. Laflin is estopped to complain of the results of Gerault's knowledge, as he executed a power to transfer in blank, and is responsible for all consequences of the act. Gerault had a right to insert his name in the blank and transfer the stock, and thus became Laflin's agent, and Laflin is charged with Gerault's knowledge.

Thomp. Liab. Stock., and cases cited, sec. 240, p. 306.
Wade on Notice, sec. 672.

5. Laflin could only transfer his stock to a person capable of taking and holding the same, and who was able to assume and respond in his place to his liability as a shareholder. The transfer to the bank being prohibited it was incapable of taking. Being insolvent it could not respond for Laflin to the creditors, hence the transaction stands as if no transfer was made, and the transferrer is still a shareholder. If this is true, Laflin cannot retain the bank's funds even as against the bank, much less its creditors and the other shareholders.

Rev. Stat. U. S. Sec. 5159.
Thompson on Liability of Stockholders, Secs. 234-5-6-7.
Thompson on Liability of Stockholders, Secs. 205, 215-16-17.
Nuckolls vs. Merry, L. R. 7 H. L. 530.
Symns Case, L. R., 5 Ch. 298.
Westons Case, L. R. 5 Ch. 614-20.
Re Imperial Association, L. R. 9 Eq. 223.
Walters 2d Case, 3 DeG. & Sm. 244.
Zuletas Claim, L. R. 5 Ch. 444.
Webster vs- Upton, 1 Otto 65.
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6. Ignorance is no defense if the legal duty is to know. The fallacy of the opinion of the Court below in the case at bar, is clearly pointed out by Mr. Thompson in his work on Liability of Stockholders, Secs. 239--240 *et seq.* The error results from the misapplication of the English decisions on "out and out" transfers between shareholders, and the ignoring of the American doctrine that the capital of a corporation is a trust fund for the benefit of the creditors, of which Mr. Thompson says he can find no trace in England.

III.

1. If all the foregoing points are decided against appellant, he should recover on the statutory provisions for the protection of creditors, and the fact that the circumstances attending the sale put him on inquiry, and he is chargeable with knowledge of what that inquiry if pursued would have developed.

Rev. Stat. U. S. Secs. 5201-5143
Kennedy vs. Green, 3 My. & K. 679--319.
Gastin vs. Am. Ex. Bank, 29 N. J. Eq. 98.

2. In view of the facts herein stated, we think that Laflin must refund this money to the Receiver on another ground. The Rev. Stat. U. S., sec. 5242, declare that all transfers of the assets of a National Bank, all deposits of money, bullion or other valuable thing for the use of the bank, or any of its shareholders or creditors, and all *payments of money to any shareholder or creditor, made after the commission of an act of iusolvency, or in coutemplation thereof, made with a view to prevent the application of its assets in the manner prescribed in the National Banking Act shall be utterly void.*

a. The "insolvency" stands admitted, This "insolvency" was known to the president of the bank. He was from his position charged with knowledge of it.

Case Receiver vs. Citizens' Bank, 2 Woods 23.
Peckham Ass'n vs. Burrows, 3 Story, 344.

b. It is not necessary that Laflin should have known it if Britton knew it—the transfer was "in contemplation of insolvency."

Case Receiver vs. Citizens Bank, 2 Woods 23.

c. That it was made with a view to prevent the application of the

assets of the bank to its creditors can not be questioned. Every man is presumed to act with a view to the consequences of his acts.

d. The bank had bought illegally over 1900 of its shares before it bought Laflin's stock. This was equivalent to an act of insolvency under the National Bank Act Rev. Statutes U. S. sec. 5201,

So that we insist that under section 5242 Rev. Stat. U. S. this was a payment of money to a stockholder after the commission of an act of insolvency, or in contemplation thereof. made with a view to prevent the application of its assets in the manner prescribed by that act and is utterly null and void, and Laflin must refund. On these points we confidently rely for a reversal of the Court below. and respectfully ask for a decree in this Court on the facts, as prayedin the bill.

ARGUMENT.

In support of these propositions, we may be permitted briefly to call attention to the language of the Courts in declaring the principles here contended for, and show their application to this case. Of course the construction of the National Bank act is involved, and to facilitate examination, and for convenience, we print as an appendix hereto the sections we consider to be applicable.

By these sections it will be perceived that Congress has endeavored by various safeguards to protect the creditors of these National Banks from any diversion of the assets, to which they have a right to look for security, to uses other than than those for which they were intended. The terse language of Justice Agnew in 72 Penn. St. 463 when referring to these sections is applicable. He says:

> "These sections (35 and 37) when viewed together teach another lesson, that banks shall not live upon themselves, so that when compelled to wind up, creditors and stockholders shall not then discover that their apparent assets are composed of their own decayed viscera instead of outside personal security. In this way only can the public be made safe against mismangement."

A purchase by the bank of defendant's stock with its surplus funds, would have been void under the sections referred to; and as the bank could not hold the stock, the transaction would be without consideration, and could not be enforced against the bank if it refused to pay. How much stronger the case when the creditor's representative comes into Court and shows that the trust funds held by the bank for the

benefit of the creditor, have been passed into the stockholder's hands without consideration.

CAPITAL A TRUST FUND FOR CREDITORS.

The doctrine that the capital stock of a corporation is a trust fund for the benefit of the general creditors is well established by all our Courts, and would without the provisions of the National Bank act protect the creditor against this illegal action of the stockholder and bank officers. This doctrine is essentially American. Mr. Thompson in his recent very able work on Liability of Stockholders of Corporations, says on this subject:

> "It must be borne in mind in estimating these two cases (Nicolls Case, 3 DeG. & J. 387, and the case at bar) that the American Courts and notably the Federal Courts in administering the assets of insolvent corporations, proceed on the ground that the capital stock and assets of a corporation are a trust fund for the benefit of creditors, but *I can find no trace of such a doctrine in the English books.* Moreover in nearly all American corporations shareholders are subjected only to a limited liability, whereas in nearly all the English companies until the Companies act, Oct. 1862, the shareholders were liable as partners."

Again in note to Sec. 10, p. 17, he says:

> "I have not found a similar statement of doctrine in any English book of reports. The idea appears to have first been formulated by the fertile brain of Mr. Justice Story in Wood vs. Dummer, 3 Mason 308, decided in 1824."

In the case of Wood vs. Dummer, 3 Mason 308–311, Judge Story says:

> "To me this point appears so plain upon principles of law, as well as common sense, that I cannot be brought into any doubt, that the charters of our banks make the capital stock a trust fund for the payment of all debts of the corporation. The bill holders and other creditors have the first claims upon it; and the stockholders have no rights, until all the other creditors are satisfied. They have the full benefits of all the profits made by the establishment, and cannot take any portion of the fund, until all the other claims on it are extinguished. Their rights are not to the capital stock, but to the residium after all demands on it are paid. On a dissolution of the corporation, the bill-holder and the stockholders have each equitable claims, but those of the bill-holders possessed, as I conceive, a prior exclusive equity. The same doctrine has been recognized by the Supreme Court of Massachusetts, in Vose vs. Grant (15 Mass. R. 505, 517. 521), and Spear vs. Grant (16 Mass. R. 9, 15). If I am right in this position, the principal difficulty in the cause is overcome."

This doctrine has been never questioned since, and Woods vs. Dummer has been cited and approved by nearly every State court in the Union, and has repeatedly been sanctioned by this Hon. Court.

In Sawyer vs. Hoag, 17 Wall, p. 610, Miller, J., delivering the opinion of the Court, says on page 620:

> "Though it be a doctrine of modern date, we think it now well established that the capital stock of a corporation, especially its unpaid subscriptions, is a trust fund, for the benefit of the general creditors of the corporation. And when we consider the rapid development of corporations as instrumentalities of the commercial and business world in the last few years, with the corresponding necessity of adapting legal principles to the new and varying exigencies of this business, it is no solid objection to such a principle that it is modern, for the occasion for it could not sooner have arisen. This principle is fully asserted in two recent cases in this Court, Burke vs. Smith, 16 Wall. 390, and New Albany vs. Burke, 11 Wall. 96."

In the case of Railroad Co. vs. Howard, 7 Wall. 392–409, Justice Clifford, for the Court, says:

> "I. Equity regards the property of a corporation as held in trust for the payment of the debts of the corporation, and recognizes the rights of creditors to pursue it into whosoever possession it may be transferred, unless it has passed into the hands of a *bona fide* purchaser; and the rule is well settled that stockholders are not entitled to any share of the capital stock nor to any dividend of the profits until all the debts of the corporation are paid. * * * Even the sale of the entire capital stock of the company and the division of the proceeds of the sale among the stockholders will not defeat the trust nor impair the remedy of the creditors, if any debts remain unpaid; as the creditors in that event may pursue the consideration of the sale in the hands of the respective stockholders, and compel each one, to the extent of the fund, to contribute *pro rata* towards the payment of their debts out of the moneys so received and in their hands. * * * Moneys derived from the sale and transfer of the franchises and capital stock of an incorporated company are assets of the corporation, and as such constitute a fund for the payment of its debts, and if held by the corporation itself, and so invested as to be subject to legal process, the fund may be levied on by such process; but if the fund has been distributed among the stockholders, or passed into the hands of other than *bona fide* creditors or purchasers, leaving any debts of the corporation unpaid, the established rule in equity is, that such holders take the fund charged with the trust in favor of creditors, which a court of equity will enforce, and compel the application of the same to the satisfaction of their debts. Regarded as the trustee of the corporate fund, the corporation is bound to administer the same in good faith for the benefit of creditors and stockholders, and all others interested in its pecuniary affairs,

and any one receiving any portion of the fund by voluntary transfer, or without consideration, may be compelled to account to those for whose use the fund is held. Creditors are preferred to stockholders on account of the peculiar trust in their favor, and because the latter, as constituent members of the corporate body, are regarded as sustaining, in that aspect, the same relation to the former as that sustained by the corporation."

In New Albany vs. Burke, 11 Wall. p. 96, Justice Strong delivering the opinion of the Court, says on page 106:

"No doubt the subscribed capital stock of a corporation is a fund, held by it in trust for its creditors, as is *also all its other property*, and had the railroad company released without equivalent consideration, or given it away, its action would have been fraudulent, and might have been set aside by a Court of equity."

In Burke vs. Smith, 16 Wallace, 390, Justice Strong, in delivering the opinion of the Court, said:

"It must be conceded that if the company has in *fraud of its creditors* released subscribers to its stock from payment of their subscription, the release is *inoperative* to protect these subscribers against the claims of creditors. * * * And it is clear that directors of a company organized under the law have no power to destroy it, *to give away its funds, or to deprive it of any means which it possesses to accomplish the purpose for which it was incorporated.* The stock subscribed is the capital of the company, its means for performing its duty to the commonwealth and those who deal with it Accordingly it has been settled by numerous decisions that the directors of a company are incompetent to release an original subscriber to its capital stock, or *to make any arrangement with him by which the company, its creditors, or the State, shall lose any of the benefit of the subscription.* Every such arrangement is regarded in equity, not merely as *ultra vires, but as a fraud upon the other stockholders, upon the public, and upon the creditors of the company.*"

In Curran vs. The State of Arkansas, 15 Howard, 304, Justice Curtis, delivering the opinion of the court, says:

"The plaintiff is a creditor of an insolvent banking corporation. The assets of such corporation are a fund for the payment of its debts. If they are held by the corporation itself, and so invested as to be subject to legal process they may be levied on by such process. If they have been distributed among stockholders, or gone into the hands of others than *bona fide creditors or purchasers, leaving debts of the corporation unpaid, such holders take the property charged with the trust* in favor of creditors, which a court of equity will enforce and compel the application of the property to the satisfaction of their debts. This has been often decided and rests upon plain principles. So far, therefore, as the property of this bank has become vested in the State or gone to its use, it is so vested and used charged with a trust in favor of this complainant as an unpaid creditor, unless there is something in

the character of the parties, or the consideration upon which, or the operation of the laws by force of which, it has been transferred, taking the case out of the principles above laid down. The creditor has the right to be paid out of the property of the bank, *a right which*, as we have seen, *follows the funds into the hands of every person* save a *bona fide creditor or purchaser*, and which a court of equity is bound to enforce by its decree against any party except such creditor or purchaser, capable by law of being brought within its jurisdiction." * * * * * *

"When this bank became insolvent, and all its assets were insufficient to perform its engagements, it is manifest that every part of these assets stood bound by the contracts which had been made with the bank upon the faith of the funds then set apart by the charter; and it is equally clear that the bank no longer had in its possession any capital stock belonging to the State" (which was a stockholder).

In Webster vs. Upton, Assignee, 91 U. S. (1 Otto) 65, Strong, J., delivering the opinion of the Court, says on page 66:

"The capital stock of an insurance company, like that of any other business corporation, is a trust fund for the protection of its creditors, or those who deal with it. Neither the stockholders, *nor their agents, the directors*, can rightfully withhold any portion of the stock from the reach of those who have lawful claims against the company. And the stock thus held in trust is the whole stock, not merely that percentage of it which has been called in and paid. This has been decided so often that has become a familiar doctrine."

In Upton, Assignee vs. Tribilcock, 91 U. S. (1 Otto) p. 45. Hunt, J., delivering the opinion of the Court, says on p. 47.

"The capital stock of a monied corporation, is a fund for the payment of its debts. It is a trust fund, to be managed for the benefit of its shareholders during its life, and for the benefit of its creditors in the event of its dissolution; this duty is a sacred one and cannot be disregarded; its violation will not be undertaker by any just minded man, and will not be permitted by the Courts. The idea that the capital of a corporation is a foot ball to be thrown into the market for the purpose of speculation, that its value may be elevated or depressed to advance the interest of managers, is a modern and wicked invention. Equally unsound is the opinion that the obligation of the subscriber to pay his subscription may be released or surrendered to him by the trustees of the company; this has often been attempted but never successfully. The capital paid in and permitted to be paid in, is a fund which the trustees cannot *squander or give away*, they are bound to call in what is unpaid and carefully husband it when received."

In Mumma vs. The Potomac Co., 8 Peters, 281, Story, J., speak-

ing of the status of contracts with creditors, after the surrender of a charter of incorporation, says:

> "The obligation of these contracts survives; and the creditors may enforce their claims against any property belonging to the corporation, which has not passed into the hands of *bona fide* purchasers, but is still held in trust for the company, or for the stockholders thereof, at the time of its dissolution, in any mode permitted by the local laws"

In Gillet, Receiver, vs. Moody, 3d Comstock, 479, which was a case where a banking association, formed under the general law of New York, being insolvent, transferred to one of its directors, certain Arkansas bonds, in exchange for shares of its own stock. It was held, that the transaction was void as to creditors, upon general principles, and irrespective to the statutory prohibition.

Bronson, Ch. J, delivering the opinion of the Court, speaking of the consideration of the transfer of the bonds, says on page 483:

> "The stock which the defendant surrendered was worthless, so that he neither lost, nor did the bank gain anything by the surrender. It follows that the Arkansas bonds, which defendant got from the bank, and which were then worth about nine hundred dollars, were in effect, a mere gift of so much money to the defendant; and that, too, when he was one of the directors and bound as a faithful trustee to protect the property for the creditors of the corporation. It would be difficult to defend such a transaction." Again he says, on page 484: "I do not doubt that the officers of the bank may properly make sacrifices of a corporate property for the purpose of passing a crisis in the affairs of the institution. But such an act can only be justified when the object is to protect the rights of creditors, and do equal justice to all the stockholders of the corporation. It must not be an act for the exclusive benefit of a particular individual, especially if he be one who has been entrusted with the management of the funds of the institution." Again he says, page 484: "Although there may be no actual intention to do a wrong, still if the transaction is allowed to stand, it will operate as a fraud upon the creditors, or if, by any possibility the fund should prove more than sufficient to satisfy them, upon the other stockholders of the bank. But if the purchase of the defendant's stock with the funds of the bank could be justified at the common law, the act was, I think, expressly forbidden by the statute, &c"

Again he says, on page 487, speaking of this section of the statute:

> "The section in question was made for the special purpose of securing the capital stock to the creditors of the company, instead of allowing it to be divided among the stockholders, and no reason can be assigned why the prohibition should not extend to the free banks, as well as to all *other monied corporations*. This is a beneficial statute and it should not be defeated by a narrow construction. Although this case falls within the letter, as the

illegal act was done by the directors, I do not doubt that the act would have been equally void, if there had been no directors, and the purchase of the defendant's stock had been made by any other officer or agent of the bank having control of its funds."

* * * "The evident intention was to prohibit a division of the capital, by whatever instrumentality the powers of the corporation in doing the act might be exerted."

In Reed vs. The Bank of Newburgh, 6 Paige, 337. Chancellor Walworth, says on page 340:

"The testimony conclusively shows that the payment of the complainants individual debt with the funds which were offered (i. e. funds of bank) would have bee a fraud upon the Tradesman's Bank. The circumstances were such as to satisfy Hunn, or any other reasonable man that the president of the bank was about to commit such a fraud. If the money had been received therefore, and the stock transferred under such a state of facts, the defendants would have lost their security for the debt, as there is not the least doubt that the Tradesman's Bank could have compelled them to restore the money thus taken." He says further, "Neither is it material to inquire whether he (the president) left a check when he took the money, though it is evident that he did not; for the mere formality of leaving a check when he had not funds in the bank to meet it, or the fact that the money was handed to him by a clerk, who was under his control, as president, cannot make the taking of the money for such a person an honest transaction as against the stockholders of the bank Neither could it authorize the defendants or their agents to receive and retain the money thus abstracted, as a valid payment of complainants private or individual debt."

In Zuleta's claim, 5 Chancery Ap. 444, it was held:

"That unless the memorandum and articles of association of a company contain in plain terms an express power enabling the company to purchase their own shares, such purchase is *ultra vires*, although the company may be empowered to deal in shares of joint-stock companies generally. Where, therefore, the broker of a banking company, acting under the instructions of the directors, bought shares in the company, and was credited with the price paid by him for the shares in his banking account kept with the company, and the company was afterwards wound up; *held*, that the broker was not entitled to prove against the company for so much of the balance due him as represented the price of of the shares; and *semble*; if the price of the shares had been actually paid to the broker by the directors, he would have been liable to refund it."

In Bartlett vs. Drew, 57 N. Y. 587, it was said:

"The plaintiff is a creditor of the New Jersey Steam Navigation Company for the amount of a judgment duly obtained. The company has no property in this state that can be taken on execution. The defendant, Drew, is found to be in possession of

assets of the dissolved or insolvent corporation, more than sufficient to pay the plaintiff her demand, and the law requires that he should pay it."

In this case the point was made that the plaintiff must prosecute all the stockholders, to the end that each should contribute his proportion to the payment of the debt. The Court holds that it is not necessary for plaintiff to do so, because:

> "The facts went to show that the defendant, Drew, had assets or property of the corporation which ought to have been applied to the payment of its debts. If the law dooms it to the payment of the debts of the corporation, it may be taken in some form by the creditors. It is a very plain proposition, that the stock and property of every corporation is to *be regarded as a trust fund for the payment of its debts, and the creditors have a lien and right of priority of payment over every stockholder*, and where stock and property has been divided between stockholders before the debts of the corporation have been paid, if one stockholder is compelled to pay more than his share of unpaid debts, he may sue for contribution, but with that proceeding the creditor has nothing to do, unless he chooses to settle equities with him."

In Oliver vs. Pratt, 3 How. 333. Story, J., delivering the opinion of the Court, says on page 401:

> "It is a clearly established principle in that (equity) jurisprudence, that whenever the trustee has been guilty of a breach of trust, and has transferred the property by sale or otherwise, to any third person, the *cestui que trust* has a full right to follow such property into the hands of such third person, unless he stands in the predicament of a *bona fide* purchaser, for a valuable consideration without notice. And if the trustee has invested the property or its proceeds, in any other property to which it can be distinctly traced, the *cestui que trust* has his election either to follow the same into the new investment, or to hold the trustee personally liable for the breach of trust."

If the trustees convey the estate by a breach of the trust, the *cestui que trust* may follow the estate into the hands of a volunteer whether he had notice of the trust or not, and into the hands of a purchaser for value, if he has notice of the trust, and notice of the trust may be either to the purchaser or to his agent, counsel or attorney.

Perry on Trusts, Secs. 217, 218, 219, 220, 221, 222, 223 and 828.

SHAREHOLDER CHARGED WITH NOTICE.

The defendant seeks to avoid the force of this position by pleading ignorance, and setting up an individual contract with the president of the bank—i. e., that he is an innocent purchaser without notice. This brings us to the question of whether a stockholder is not bound

to know what his relations with the corporation funds actually are. Can a stockholder be an innocent purchaser of the assets of his corporation as against creditors, in case of the insolvency of the bank, and is he not bound to know the condition of the corporation and the nature of all its dealings with him.

Thompson on Liability of Corporate Agents and Officers, page 39, says:

* * * "The shareholders of a corporation are conclusively charged with notice of the trust charncter, which attaches to its capital stock, and as to it they cannot occupy the status of innocent purchasers, but they are to all interests and purposes parties to the trial. When, therefore, they have in their hands any of this this fund, they hold the same *cum onere*, subject to all equities which attach to it."

Justice Story in 3 Mason 308, says:

"If the capital stock is a trust fund, then it may be followed by the creditors into the hands of any person having notice of the trust attaching to it. As to the stockholders themselves, there can be no pretense to say, that, both in law and fact, they are not affected with the most ample notice. * * * It is not, however, necessary to search for analogous cases; for upon the plain import of the charter, the capital stock is a trust fund for creditors. and the stockholders, upon the division, take it subject to all equities attached to it. They are, to all intents and purposes, privies to the trust and receive it *cum onere*."

In the case of Gratz vs. Redd, 4 Ben Monroe, p. 262, Ewing, Justice, says of a misappropriation of the funds of a corporation to a stockholder against a creditor:

"That the directors might be rendered personally liable for a fraudulent breach of trust or gross negligence, or a faithless misappropriation of the trust fund placed in their hands is unquestionable. They are mandataries and trustees, bound to look to the law under which they act, and faithfully to administer the trust funds entrusted to their management, for the objects of the trust. 3 Lonisiana, 569; 19 John. 477; 8 Cowen, 387. But though they may be made personally liable for a faithless misappropriation of the fund, the fund itself may be pursued into the hands of any one, who is not an innocent purchaser or innocent recipient of the same, for a valuable consideration. If either has acquired it *without consideration*, or with notice of the trust, he holds it in trust, and may be compelled to disgorge at the instance of the *cestui que trust*, or of him who has the prior and better claim to it, *and as notice to the agent is notice to the principal, and the directors are the selected mandataries and agents of the stockholders, it may be well doubted whether notice to the former is not notice to the latter*. But be this as it may, a chancellor will pursue and ferret it out, if it can be traced, that it may be applied to the purpose

of the trust, 2 Story Eq. 483; and will do so though they be stockholders. 19 Johns. 477; 8 Cowen, 387; 3 Mason 308. The capital was set apart by the charter as a fund for the completion of the work—all creditors, subsequent as well as prior, have a right to look to it and to its faithful administration for the payment of their debts. These debts, whether prior or subsequent, it may be presumed, were contracted, directly or indirectly, in the accomplishment of the grand object, and they have an interest in and claim upon the fund set apart by law for their payment and may hold the directors responsible for its unfaithful distribution, or may follow it into the hands of the distributees who hold it as volunteer recipients, having no rightful claim upon it."

In Slee vs. Bloom, 19 John. 456 A resolution was passed that the stockholders might have the privilege of forfeiting their stock to the company by the first of December following on paying 30 per cent. on their shares. Spencer, C. J., says:

"I do not stop to inquire by what means this resolution was obtained, I pronounce it to be against the fundamental principles of law and equity, legally fraudulent and therefore void and inoperative."

Discussing the question of notice, in the case, he says:

"But as to the effect of notice, the applicant's dissent was embodied in the resolution, and none of the respondents could have been ignorant of it if they saw the resolutions. All the stockholders lived in or near Poughkeepsie, many of them had personal interviews with the trustees, and it is inconceivable that they would have been ignorant of so important a fact. Again the trustees were the agents of the stockholders, and it is a fixed principle that notice to the agent is notice to the principal."

In the case of Taylor vs. Miami Exporting Co., 5 Ohio, 162, the Court quotes Judge Story's opinion in Wood vs. Dummer, 3 Mason 310, and approves it in full. He also says on page 166:

"I look upon it as clear that all corporations are trustees for the individuals of which they are composed, and that those who act for the corporation and conduct its affairs are trustees for the corporation, and cannot appropriate the corporation funds to their individual advantage to gratify their passions, or for any other purpose than those for the general benefit of the corporation and its creditors."

In Adler vs. Milwaukee Brick Co., 13 Wis. 57, the capital stock of a corporation was held to be a trust fund, pledged for the payment of debts of the corporation, and on page 61, Dixon, Ch. J., says:

"Such actions (*i. e.* bank suits), when prosecuted independently of any statutory provisions, are sustained on the ground that the capital stock being a trust fund, may be followed by the creditor and others having an interest in the proper application of it,

into the hands of third persons, having notice of the trust attaching to it. And that the stockholders, whether delinquent or withdrawing are, always, both in law and fact, affected with such notice. The rights of creditors being superior, in partaking somewhat of the character of a lien, equity will regard and work them out by the same means, by which the corporation itself should have done so. Such actions, also, in many respects, are like an ordinary creditor's suit, but on account of the peculiar nature of the trusts to be enforced, I am inclined to agree with counsel that at least, as against stockholders, they might still be maintained, though the creditors' bill should be abolished by statute."

In Osgood vs. Layton, 3 Keys. N. Y., 522, it was held that an action may be maintained by the receiver of an insolvent insurance company against its stockholders, to recover sums received by them as dividends at the time the company was insolvent, on the ground that the company being insolvent, distributed its capital among its stockholders, thus placing it beyond the reach of its creditors, which is a fraud upon the creditors. The Court says, on page 523:

"Ignorance of facts that it the duty of the managers to know, (not to know which was gross ignorance) cannot excuse the managers and impart any virtue or validity to acts, otherwise clearly illegal, which is a palpable fraud upon its creditors."

Cumberland Coal Co. vs, Sherman, 30 Barb., 553, the court says on page 571:

"There can be no question, I think, at the present time, that a director of a corporation is the agent or trustee of the stockholders, and as such has duties to discharge of a fiduciary nature towards his principal and is subject to the obligation and disabilities incidental to that relation." Again, on p. 572, "It has not been doubted that the relation of the director to the stockholders is the same as that of agent to his principal, the trustee to *cestui que trust*, and out of the identity of these relations necessarily spring the same duties, the same changes, and the same policy of the law."

In 48 Penn. 29, Strong, J., in discussing the following instruction given by the court below, says:

"That if the company had assets sufficient to pay their debts, the cancellation of the stock of the two hundred and sixty-six subscribers on the 11th of January, 1861, was valid and released the defendant," says: "From this we entirely dissent. The directors of the company then in office were its agents with limited powers, the extent of which the defendant was bound to know. Their duties were to conduct its affairs to the furtherance of the ends for which the company was created. They had no power to destroy it, to give away its funds, or to deprive it of any of its means to accomplish the full purpose for which it was chartered.

> The creditors were not the only person who had rights and interests at stake. The stockholders who had paid their subscription, or bought their stock, and the commonwealth, by whom the charter was granted, were at least equally interested. * * Directors of a railroad company are trustees for all the stockholders, and in a very just sense for the commonwealth. It is an abuse of their trust, wholly unauthorized, and at war with the design of the charter, to single out some of the subscribers and release them from their liability. No such authority in them has ever been recognized."

In Verplank vs. The Mercantile Ins. Co. 1 Edw. Chy. 84, it was held that:

> "The corporation is merely the creature of the law, a politic and not a natural body. It is made up by the stockholders, each of whom becomes a corporator, identified with and forming a constituent part of the corporate body. When a corporation aggregate is formed and the management and control of the officers are in the hands of directors, the latter become trustees of the corporators, and a relation is created between the stockholders and those directors who as trustees, become accountable for dereliction of duty and violation of trust."

In Sanger vs. Upton, 91 U. S. (1 Otto) 56, Sawyer, J., delivering the opinion of the Court, on page 59. in discussing the question of whether notice to the stockholders of an application to the District Court, for an assessment on unpaid stock was necessary, says:

> "As a stockholder she (the defendant) was an integral part of the corporation. In the view of the law, she was before the Court in all the proceedings, touching the body of which she was a member. In point of fact, stockholders in such cases can hardly be ignorant of the measures taken to reach the effects of corporation."

In Sawyer vs. Hoag, 17 Wall. 610, Miller, J., says:

> "The corporation is but the representative of its stockholders, and exists mainly for their benefit, and is governed and controlled by them through the officers whom they elect; and the interest and power of legal control of each shareholder is in exact proportion to the amount of his stock, it is, therefore, but just, when the interest of the public or of strangers dealing with the corporation is to be affected by any transaction between the stockholders who own the corporation and the corporation itself, such transactions should be subjected to a rigid scrutiny, and if found to be infected with anything unfair towards such third person calculated to injure him, or designed intentionally and inequitably to screen the stockholder from loss at the expense of the general creditor, it should be disregarded or annulled as far as it may inequitably affect him."

If a stockholder is an integral part of the corporation and the director his trustee, it is difficult to apprehend the force of the position

that he can plead ignorance when asked to refund the trust fund belonging to the creditors. While the line often should be very clearly drawn between the corporation, the stockholder and the director, and their respective rights, we submit there is neither logic nor reason for the position, that as to creditors and other stockholders, any misapplication of the trust fund by the director to the benefit of a single shareholder, may in any event be held valid.

On this principle of privity between the corporation and its directors and shareholders, we find that shareholders are entitled to know how the business is being carried on and cannot be denied access to the books of the corporation.

In Cockburn vs. Union Bank, 13 La. Ann. 289, it was held:

> "A stockholder in a corporation has right of access to the proper sources of knowledge, to know how the affairs have been conducted, if their rights are not restricted in this respect by the charter or rules and by-laws passed in conformity thereto; and stockholders in a banking company have a right to the inspection of the discount books of the company within proper and reasonable hours; if the right is denied a mandamus is the proper remedy."

In State *Ex rel.* Martin vs. The Bienville Oil Works, 28 La. Ann. 204, the relator was a large stockholder in defendant. Held:

> "That in the very nature of things and principles of equity, good faith and fair dealing, he has the right to know how the affairs of the company are conducted, whether the capital of which he has contributed so large a share is being prudently and profitably employed or otherwise, and being deprived of this right by the directors, he was entitled to a mandamus for an investigation."

The same principle is announced by Judge Miller in the case of Farrar vs. Walker, 3 Dill. 506, where he puts the right of recovery on the ground that the stockholder is expected to know the condition of his corporation, saying:

> "The plaintiff was for two years a stockholder in that corporation, he had a right of access to all its books and a vote for its directors; it was his duty to interest himself in its management so far as to see that what it said was true, that its directors were honest, that he should use his influence to get honest men in, and yet during two years he stands idle and does nothing, makes no inquiry, no investigation. It is too late when the creditors pursue the corporation into bankruptcy, and the assignee pursues him for his note, to turn around and say "I find that I was swindled, I was there two years and might have found it out, and not let everybody trade in my note deposited there, but I was

cheated and I now rescind this contract." The same doctrine is held by Judge Dillon in Upton, assignee vs. Englehart, 3 Dillon, 494.

29 Connecticut, 197, was a case where a bank was fraudulently organized, and a party induced by fraud to subscribe for the stock on the ground that he would not be required to pay for it. The bank failed and went into the hands of a receiver; the receiver brought suit in the name of the bank against the defendant upon his subscription; held, that he could not avail himself of the fraudulent character of the bank as a defence; *or the misrepresentation inducing him to subscribe, because he and his associates constituted the bank, and he therefore was with them in the fraud of the bank upon the public.*

Shareholders are concluded by judgments against the corporation as to amount of their *pro rata* liability as stockholders; and in nearly all the States provision is made for executions against stockholders on unsatisfied judgments against corporations. All of these principles grow out of the privity between the stockholder, the corporation and the directors, and we insist that *quo ad* the trust funds, the stockholder cannot shield its misapplication to his benefit under the plea of want of notice, even if he paid out a valuable consideration.

LAFLIN NOT A BONA FIDE PURCHASER.

The case shows, however, that Laflin does not occupy in fact the position of a purchaser for value, even if without notice.

In Boone vs. Barnes, 23 Miss. 136, it was held a *bona fide* purchaser, is one who at the time of his purchase advances a new consideraction, surrenders some security, or does some other act, which if his purchase was set aside, would leave him in a worse than his original position.

In Wright vs. Petrie, 1 S. & M. Ch. 282, it was said of a settlement relieving a debtor from his liability to a corporation:

> "I consider it perfectly immaterial to this controversy whether fraud in fact was intended by this settlement or not. It is a matter of public history, and also attested by the evidence in the case, that this company was then on the eve of hopeless insolvency, and that the directors were dealing with its assets in the most reckless manner. A voluntary transfer or relinquishment of any portion of its assets under such circumstances is, within the contemplation and policy of the law, fraudulent and void as against creditors. The directors were the trustees of the corporate funds, and were bound to administer them in good faith, for the benefit alike of the stockholder and creditors of the institution, and any one receiving such funds from their hands, by voluntary transfer, or upon a mere assumed

Bank, Bal-

and colorable consideration, would, upon general principles ty shares bound to account to those for whose use such funds were hel nsferred

In Curran vs. Arkansas, 15 How. 304, the Court says: t bank,

"Whatever losses the bank sustains are losses of the capita g dis-paid in by its stockholders, *that is the only fund it has to lose.* Whe gned, it has become insolvent it has lost all that fund, *and has nothiu* of the *belonging to its stockholders.* In some sense a bank may be said d the be indebted to its stockholders for the capital they have paid in with the leave of the State they have a right to withdraw it *afte* until *all debts a e paid*, and if the State is itself the sole stockholder, i Bank may withdraw its capital while any of it shall remain. But from mp- the very nature of things it *cannot withdraw capital from an insol-* of *vent bank, because it has none of its capital remaining. When insolvent its ass ts belong solely to its creditors.*"

In Gillett vs. Moody, 3 Comst. 479, the Court says of stock in insolsolvent corporations:

"The stock which the defendant surrendered was worthless, so that he neither lost nor did the bank gain anything by the surrenker. It follows that the Arkansas bonds which the defendant got from the bank, and which were then worth about nine hundred dollars, were in *effect a mere gift of so much money to the defendant*, and that too when he was one of the directors and bound to protect the property of the creditors of the corporation."

The insolvency here is admitted, hence the stock had no value. The bank had nothing belonging to its stockholders. Laflin's stock was liable to assessments, so that instead of being "of value" it was a liability. He is put in no worse position than before he transferred his stock, and cannot, even if without notice, plead that he holds the relation of a *bona fide* purchaser for value.

LAFLIN ESTOPPED TO PLEAD IGNORANCE.

Laflin is estopped from setting up his ignorance of Britton's acts. Britton was elected by him and other stockholders. For over five years there had been no election of directors. Laflin knew this. He suffered Britton to be held out to the creditors as a proper trustee of the banks funds. The alternative is presented here of who shall suffer from Britton's illegal acts, the creditor or the stockholder?

Mr. Thompson in his work on Liability of Stockholders, commenting on this very case, says:

"Again it is a principle that where one of two innocent persons must suffer through the fault of a third, the loss shall fall upon the one who was most in fault or to whom the more negligence is imputable. * * * In respect of the unlawful and fraudulent act of C. (Britton), A. (the creditor) was guilty of no negligence. Was B. (Laflin) in a like situation? Was it not incumbent upon him to see that the transfer of his shares,

made through a broker, was made to a person capable of taking? Did he proceed with reasonable diligence to ascertain that fact? He proceeded with no diligence whatever." See cases cited.

Now in that case who should suffer? Clearly the stockholder, even though he did not know of Britton's illegal act. See cases cited on this point in our brief herein.

II.

TRANSFER COULD ONLY BE MADE ON BOOKS.

This brings us to the second point—which is that Laflin could only transfer his stock on the books of the Association.

Revised Stat. U. S., section 5139, says:

> "The capital stock of each association shall be divided into shares of $100 each, and be deemed personal property, and be transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association."

According to the best considered authorities, where the law requires transfers of stock to be made on the books, a transfer by delivery of certificates with power of attorney to transfer executed, only conveys an equitable title.

In Union Bank vs. Laird, 2 Wheat 290, the charter required transfer on books. Story, J., delivering opinion, says:

> "No person, therefore, can acquire a legal title to any shares except under a regular transfer according to rules of the bank, and if any person takes an equitable assignment it must be subject to the rights of the bank under the act of incorporation, of which he is bound to take notice."

In Brent vs. Bank of Washington, 10 Peters, 595–615, this case is affirmed.

In Black vs. Zacharie, 3 How. p. 483, the question was as to the ownership of certain stock, which had been assigned by Black, for the benefit of all his creditors, and which were attached by one of his creditors, on the ground that the assigment was invalid. In discussing this question, Story, J., delivering the opinion of the Court, says on page 513:

> "It is true that the charter of the Carrollton Bank, and of the Gas Light and Banking Co., provided that no transfer of the stock of these corporations shall be valid or effectual, until such transfer shall be entered or registered in a book or books, to be kept for that purpose by the corporation. But this is manifestly a regulation designed for the security of the bank itself, and of third parties taking transfers of the stock without notice of any prior equitable transfer. It relates to the transfer of the legal title and not of any equitable interest in the stock subordinate to that title." Then cites and approves The Union Bank vs. Laird, 2 Wheat. 390.

In Bowden, Receiver, vs. The Farmers and Merchants Bank, Baltimore 1 Hughes. 308; one Burwell was the owner of twenty shares of the capital stock of the First National Bank of Norfolk, transferred the same absolutely on the books of the bank, to the defendant bank, as collateral security for debt. The debt due by Burwell being discharged, the defendant, bank, returned to him the shares assigned, with power of attorney to retransfer the shares on the books of the National Bank. The retransfer, however, was not made and the shares continued to stand in the name of the defendant bank, until the suspension of the Norfolk Bank in May, 1874. The Norfolk Bank went into the hands of a receiver, assessment was made by the comptroller and demand for payment of this assessment was made of defendants and refused, and suit brought to recover the assessment.

Giles, J., in delivering the opinion of the Court, on page 309, says:

> "By the 12th section of the act of 1864 (being section 5143, R. S. U. S.) it is provided that every one becoming a shareholder by such transfer shall in proportion to his shares succeed to all the rights and liabilities of a prior holder of such shares. By such section, it is also provided that the shares shall be transferrable on the books of the bank. Now it was the duty of the defendant, having taken assignment on the books of the said bank of the twenty shares, when its loan was repaid to it, to have seen that these shares were transferred back to the said Burwell on the said books, and having failed to do so before the said bank was closed by the comptroller, the receiver was authorized to regard it as the legal owner of these shares. I therefore give judgment in this case, for the sum of two thousand dollars, with costs of this suit."

In Brown vs. Adams, 5 Bissell 181, Blodgett, J., held in regard to National Bank stock:

> "When stock is, by its terms, transferable only on the books of the company, its delivery to an officer of the company, with a request that he transfer it, is not sufficient to pass a legal title. Until it is actually transferred, the assignee has no legal right of action in his own name."

In Fisher vs. The President, etc., of the Essex Bank, 5 Gray, 373, it was held by Shaw, Ch. J.

> "Shares in the bank whose charter provides that they shall be transferable only at its banking house and on its books, cannot be effectually transferred, as against a creditor of the vendor, who attaches them without notice of any transfer, by a delivery of the certificates thereof, together with an assignment and blank power of attorney, from the vendor to the vendee, even if notice of such transfer be given to the bank before the attachment."

In Webster vs. Upton, 91 U. S. 65, speaking of the relation between the company and the stockholder, Judge Strong says, on page 69:

"But if the law implies a promise by the original holders or subscribers to pay the full par value when it may be called, it follows that an assignee of the stock, when he has come into privity with the company by having stock transferred to him, on the company's books, is equally liable." * * *

Speaking of the transfer of stock, Judge Strong says: "If Webster became the purchaser, it was his vendors duty to make the transfer to him, where only a legal transfer could be made, namely: on the books of the company; and the purchase was in itself authority to the vendor to make the transfer. Still further, it was Webster's duty to have the legal transfer made to relieve the vendor from liability to future calls. A court of equity will compel a transferee of stock to record the transfer, and to pay all calls after the transfer. *If so, it is clear that the vendor may himself request the transfer to be made; and that, when it is made at his request, the buyer becomes responsible for subsequent calls.* This, however, does not interfere with the right of one who appears to be a stockholder on the books of the company, to show that his name appears on the books without right and without his authority."

In Grymes vs. Hone, 49 N. Y. 17, the owner of 120 shares of stock in one certificate, of the Bank of Commerce, transferable on the books of the bank, on the surrender of the certificate under seal, witnessed, made an absolute assignment in writing of 20 shares thereof to the plaintiff, his favorite grand-daughter, for value received, as the assignment purports, and appointed her his attorney irrevocable to sell. The assignment was intended as a gift, *mortis causa*. In a suit to compel the delivery of the stock, and its transfer on the books of the bank, the evidence was that the gift was not completed, that the stock was not transferred on the books of the bank, and could not be until the certificate held by the donor was surrendered.

The Court, Peckham, J., delivering the opinion, on page 22 says:

"The donor, by this assignment and power, parted with all his interest on the stock assigned, as between him and the donee. and the donee became the equitable owner thereof, as against every person but a *bona fide* purchaser without notice. Delivery of the stock certificate, without a transfer on the books of the bank would convey no more than an equitable title, as against the bank (N.Y. & N. H. R. R. Co. vs. Schuyler, 34 N. Y., 80, and cases cited) though it would give a legal title as against the assignor (McNeil vs. Tenth National Bank, 46 N. Y. 325, just decided and according to Duffield vs. Elwes, 1 Bligh, N. S. 497,530) decided in the House of Lords.) The representatives of the donor were trustees for the donee by operation of law to make the gift effectual."

In McNeil vs. The Tenth National Bank, 46 N. Y. 325, Rapallo, J., delivering the opinion of the Court, says, on page 331:

"It has also been settled by frequent adjudications, that, as between the parties, the delivery of the certificate, with assignment and power endorsed, passes the entire title, legal and equitable, in the shares, notwithstanding that, by the terms of the charter or by-laws of the corporation, the stock is declared to be transferable only on its books; that such provisions are intended solely for the protection of the corporation, and can be waived or asserted at its pleasure, and that no effect is given to them except for the protection of the corporation; that they do not incapacitate the shareholder from parting with his interest, and that his assignments not on the books, passes the entire legal title to the stock, subject only to such liens or claims as the corporation may have upon it, and excepting the right of voting at elections."

On page 335, in commenting upon the case of McCready vs. Rumsey, 6 Duer, 574, he says:

"The question in 6 Duer was between the assignee of the shares and the corporation, and it was held that the lien of the corporation on the stock, for unpaid subscriptions, was protected where the transfer was not made on the books; a position fully recognized in this opinion, and in the cases I have cited. Moreover in the case in 6 Duer, the general act under which the corporation was formed, provided *that transferees should take subject to the liabilities of prior shareholders.*"

In McCready vs. Rumsey, 6th Duer 574, the plaintiff was an assignee for value of certificate for twenty shares of the capital stock of defendants bank; the certificate was in the name of one Jenkins, and the shares stood in his name upon the books of the bank. The plaintiff demanded a transfer of the shares to himself and a new certificate in his own name thereon. The president of the association refused to make the transfer, alleging that Jenkins' original subscription for the shares was unpaid, whereupon the plaintiff brought this action to recover damages for such refusal. The 19th section of the general banking act of New York, at that time, provided:

"That the shares shall be deemed personal property and shall be transferable on the books of the association, in such manner as may be agreed upon in the articles of the association, and every person becoming a shareholder by such transfer, shall, in proportion to his share, succeed to all the rights and liabilities of prior shareholders."

Held that the plaintiff, as assignee, had no other rights than would have belonged to Jenkins had he not parted with his certificate, and by a true construction of section 19 of the general banking act, and the provisions of the bank's articles of association, he had no right to demand a transfer of the shares, without paying to the bank the sum due from Jenkins thereon. Held, further, that the refusual of

the plaintiff make the transfer demanded was justifiable and furnished no ground for the recovery of damages.

Bosworth, J., delivering his concurring opinion, says:

> "The plaintiff has not obtained as yet, a legal title to the stock; to obtain it a transfer must be made on the books of the association, signed by the shareholder or his attorney in writing. Unless by a transfer made in a different manner, the assignee of the certificate can acquire rights and equities against the corporation superior to those which the assignor had the defendant may assert its lien upon the stock as against the plaintiff, precisely as it could have done against Jenkins. * * * We think it quite clear that the Court of Appeals meant to decide and to be understood as deciding that an assignee of a certificate could not thereby acquire any rights against the corporation superior to those possessed by the assignor. That he was to be deemed an assignee of a thing in action, not negotiable, and as succeeding merely to the rights and equities of the assignor. Applying that rule to this case the complaint should be dismissed."

TRANSFER COULD ONLY BE MADE TO A PERSON CAPABLE OF HOLDING STOCK AND LIABLE TO CREDITORS.

2. Section 5139 Rev. Stat. U. S. provides that:

> "Every person becoming a shareholder by mere transfer shall in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares, and no change shall be made in the articles of association by which the rights, remedies or security of the existing creditors of the association shall be impaired." Section 5151 provides that: "The shareholders of every National Banking Association shall be held individually responsible equably and ratably, and not one for the other for all contracts, debts, and engagements of such associations to the extent of the amount of their stock therein, at the par value, in addition to the amount invested in such shares."

These provisions are intended to protect the creditor, and they require that the transferer of National Bank stock must see that his transferee is capable of holding his stock, and responding to his liability. In the case of insolvency we contend that he must see not only that his transferee is capable of holding the stock, but is *able* to respond to his liability. The directors of the bank could refuse, in the interest of the creditors and other stockholders, to register a transfer to a minor, a married woman, or to the bank as incapable of holding, or to an insolvent person if the bank was "in difficulties." The creditors only look to the books to see who is liable to them, and so rigid is the rule that it has been held that the stockholder in the books is liable to creditors even though holding the stock as collateral.

In Rosevelt vs. Brown, 11 N. Y. 148, Edwards, J., delivering the opinion of the Court, says on page 152:

> "A corporation, although it is an artificial existence, must be composed of natural persons who manage and administer its affairs and receive its benefits. These persons are not generally named in the charter of incorporation, and there must be some way of ascertain who they are. In a joint stock company they are, and they necessarily must be, those who hold the evidence that they are the owners of the stock; they are called the stockholders and not the stock owners, and they are generally those who appear on the transfer books of the company to be stockholders. This must be so in the case of corporations which are subject to the provisions of the revised statutes (1 R. S. 604, Sec. 8). As between himself and third parties, the person who appears upon the transfer books to be a stockholder, may have parted with all his interest in the stock, but as between himself and the corporation, such person, and he only, is treated as a stockholder."

Nuckolls vs. Merry, L. R. H. of L. p. 530. This was a suit by a seller of stock against his broker for the value of stock, which was sold by his broker to a stock jobber, who sold it again and in a similar way it passed through several hands, and the jobber, without fraud, received from his purchaser, and passed on to complainants broker, the name of a minor, legally incapable of accepting the shares, to whom the seller executed a transfer; but the transfer was never registered. Afterwards the company was wound up, and the original holder required to pay subsequent calls.

It was held: That the jobber was liable to make good to plaintiff the calls which he had been compelled to pay on the minor's default.

Lord Chelmsford says on page 544:

> "The jobber does not fulfill his contract by merely giving to the selling broker any name, as the purchaser of the shares, but only by giving the name of a person who is of ability to contract, and who has consented to become a purchaser. In other words, the jobber is bound to furnish the seller with the means to execute a transfer of the shares to a nominee, against whom the obligation to take such transfers can be enforced, and thereby the seller be relieved from all liability with respect to his shares, and until he has done so, the jobber has not performed his contract.

In Symons case, L. R. 5 Ch. App. Cases 298, speaking of the transfer of stock, Giffard, L. J., says:

> "The principle is as simple as possible, to wit: That a man who executes a transfer of shares remains liable, unless and until there is on the list a transferee, who is legally liable to the company; and you take for the purpose of ascertaining whether the transferor has or has not provided such a transferee, the date of

the winding up." Held in this case, "that where shares were transferred to an infant, and his name had been placed on the register, the company being ignorant of the fact of the infancy, and he did not come of age till after the commencement of the winding up, that the official liquidator could refuse him as a shareholder, though after coming of age he was willing to confirm the transfer.

In Weston's case, L. R., 5 Ch. 614, where shares had been transferred to an infant, Lord Hatherly says on page 620:

> "The authorities have completely and clearly decided, that at at the time of the winding up, the transaction was utterly fruitless, and the person who was the original shareholder remains a shareholder, even in case where *he is entirely innocent of the transaction and not aware that the shares were being transferred to an infant.*

In Capper's case L. R. 3 Chy.. App. 458, the facts were as follows: In February '65, one Simonides, engaged a broker to purchase shares for him in the China Steamship Company, the broker bought of Capper thirty shares, in the market in June, and appropriated them to the purchase made by Simonides, who paid the market value. He named his clerk, Richard Amerey, who was an infant, as the transferee. The transfer was executed by Capper to Amerey of these thirty shares. and Amerey was entered on the register in June '65. Capper received a letter in November '65, informing him that Amerey was an infant, and applying to him for payment of the calls then due on the shares. Capper called on the solicitors of the company, and found his share certificates had been cancelled, and fresh certificates issued to Amerey. The company went into liquidation. and Capper was enrolled on the list of contributories. He applied to have his name removed and the application was refused by the Master of Rolls.

W. Page Wood, L. J., sustained the opinion of the Master of Rolls, and dismissed the appeal, saying:

> "It was to the interest of Capper, in parting with his shares, to see that he was handing them over to a person who could be officially placed on the register. According to Mann's case, a transfer of shares to an infant is invalid. Capper was informed in November '65, that he was held liable as the holder of these shares, and was applied to for the payment of calls. He makes inquiry, finds out that Amerey has been entered on the register. as holder of new certificates, issued to him, and he does no more. He thinks it the most prudent course not to stir. The company do not sue him, but their application gave him fair notice that they held him liable. * * * * * * Having received that notice, and done nothing, he must take the consequences."

In Mann's case, L. R. 3 Ch. appeals 459, Sir John Rolt, L. J. held.

> "Where a transfer was made to an infant. that it would follow at first sight, that the transfer by Mann being a nullity, Mann still remained a shareholder. It is, however, contended that there is a duty thrown upon the directors, to enquire, whether the proposed transferee was a proper and competent person to be a transferee, not merely that they had the power to reject an improper person, but that it was their duty to do so, and that they neglected this duty and therefore were estopped from saying that this transfer was a nullity. I think that this argument cannot be sustained and the answer to the following questions shows that this is so. Was there any greater prior duty cast upon the company of inquiring whether Mann's transferee was a proper person, than upon Mann, the transferor himself, of so doing? Both Mann and the company took it as a matter of course, that the transferee was a proper person. The nomination by Parkinson, of Simms as the transferee amounted to a representation that Simms was a proper person. Mann accepts that representation, passes it on to the company, and they act on the assumption that Simms was a proper person. Surely *the first duty of ascertaining that his transferee was a proper person was cast upon Mann, himself.* Therefore, I think that Mann still represents the shares, and that this bill be dismissed with costs."

In Litchfield's case, 3 DeGex & Sm., the Vice Chancellor says on p. 145:

> "Where the transfer or had transferred to his son, a minor, the consequence is, that, notwithstanding the singular words of the company's deed of settlement relating to minors being shareholders, whatever be their meaning, Mr. Lloyd, the father, has not shown a case in which he discharged himself of his liability, he remains as liable as he ever was."

In Reid's case, 24 Beav., 318, the father voluntarily transferred shares, in an incorporated company, to his infant son. The company was afterwards wound up, the son being still an infant—held that the father was a contributory.

In Burke vs. Smith, 16 Wall, 390, Strong, J., in discussing the effect of the transfer of stock to the city of New Albany, by the defendants in that suit, says:

> "It is true that a mere assignment of his share, by a subscriber, *does not re ieve him from liability until the assignee is substituted in his place.* But here the substitution was recognized by the company. The stock was charged to the appellees on the books, and after a lapse of nine years it is too late to affirm that the transfer was not accepted."

In Bowden vs. Santos, (Ct. Ct. U. S., Fourth Circuit, Eastern District of Va.,) I. Hughes, 158. It was held that a shareholder in a Na-

tional Bank, knowing to be insolvent, it transferred his shares, for the purpose of escaping liabilities to creditors, to an insolvent. Held, that as to creditors the transfer was void, on the principle that the capital stock of an incorporated company is a trust fund for the payment of its debts, and required by courts of equity to be honestly and faithfully regarded and handled ; and that a contract involving the withdrawal of any portion of the capital stock from the reach of the creditors, will not be tolerated by a court of equity.

LAFLIN IS BOUND BY THE KNOWLEDGE OF HIS TRANSFER AGENT.

If Laflin could not transfer the stock except to a person capable of holding, and it was his duty to see that his transferee was a proper person, then he must have seen that the transfer was thus made on the books of the bank before he was relieved from liability to creditors. If for any reason the transfer as to the bank was not complete till registered, then the creditors have the same rights as the bank had as against Laflin. The moment you send Laflin to the books of the bank in this case, that moment his plea of ignorance "fades into thin air." His attorney, Gerault, knew the whole affair. Knew of Britton's illegally using the bank's funds. Knew that the bank was charged with the stock and that the trust fund paid for it ; knew it was valueless, and that Laflin, his principal, was getting the creditors money.

It is scarcely necessary to quote authorities to this Court to maintain " that notice to the agent is notice to the principal "

Mr. Thompson on Liability of Stockholders, Sec. 240, p. 306, comments on this question as follows :

> " He (Laflin) proceeded with no diligence whatever. He executed and delivered to the broker, through whom the transaction was effected, a power of attorney *in blank* to transfer his shares. The broker thus received implied authority to fill the blank with whose name so ever he pleased. He filled it with name of a person who knew the real nature of the transaction. The transferor thus shut his eyes and stopped his ears. He did not know and probably did not care to know to whom they were transferred. So far as his actual knowledge went he transfered to *nobody* and got pay for them with *nobody's money* Was not the knowledge of his agent under the power of attorney imputable to himself? The general rule is that notice to an agent is notice to the principal (*see note and cases cited.*) This rule properly limited charges the principal with notice of every fact which is connected with the business in which the agent is employed. The reasoning of Judge Dillon against the operation of this rule in such a case, founded upon the general custom of transferring shares from hand to hand, by means of powers of attorney executed in blank, is certainly very persuasive, but it does not take the case out of the rule. The business for which this agent is appointed is to

execute a conveyance of shares; he knows that the conveyance he is about to make is unlawful if this knowledge is not imputable to his principal that the rule fails."

We simply add to this, that Judge Dillon's reasoning "that the sale and transfer of the stock as between Laflin & Britton was complete as soon as the stock was delivered assigned in blank with the power to transfer and payment received"—5 Dillon, p 8—may be applicable to telegraph stock, railroad stock and other speculative stocks, which pass from hand to hand in Wall street, but never can apply, where a liability of the stock-holders on the stock to the creditor is provided by law. In such case the transfer can be only on the books and to a person capable and able to assume the transferers liability.

Judge Dillon in combatting the effect of Gerault's knowledge says—5 Dillon 85:

> "For in this view of the case if the name of some one outside the bank having no knowledge of what was going on inside of the bank, had been filled in by Britton to make the transfer, or if Britton filled in his own name, Laflin would not be liable. It is extremely narrow ground to make Laflin's liability depend upon the accident whose name shall be used to make the formal transfer, and upon what knowledge of the interior workings of the bank such person may happen to possess, especially in view of the custom to transfer stock in blank through many hands before any registry is made."

Whoever made the transfer would have made it as Laflin's agent to Britton as "trustee." This would have put the transfer attorney on inquiry and the inquiry would have developed the bank "an incapable body," as the *cestui que trust*—and Laflin would have been bound. The liability does not rest on the "narrow ground of the accident of appointing the book-keeper the transfer agent—even if notice be requisite."

In German Union Asso vs. Sendmeyer, 50 Pa. st. 67, it was held:

> "That the delivery by an owner of stock of a power of attorney to transfer, executed in blank, with the certificates, is evidence of an implied authority to fill up the power with a name of an attorney to make the transfer." See also Leavitt vs. Fisher adm, 4 Duer 1.

In Gaston vs. The American Exchange Bank, 29 N. J., Eq p. 98. It was held that one who loans money on a pledge of stock, held in trust, will be held to have had notice that the trustee was abusing his trust and applying the money loaned to his own purposes, when the certificates of stock show on their face that the stock was held in trust, though the name of the *cestui qui trust* does not appear; and where the loan was appropriated for the private purposes of the bor-

rower, and that fact could have been revealed by inquiry, when the certificate, on its face reveals the trust, the duty of inquiry devolves upon one who loans money on pledge; therefore the Chancellor on page 102, says:

> "The fact that the word *trustee* was written after the name of Mr. Steele, was sufficient notice to the bank. of the existence of the trust. Sturdevant vs. Jaques, 14 Allen, 523; Shaw vs. Spencer, 100, Mass. 382. And it was notice to it, that Mr. Steele was not the beneficial owner of the stock, and therefore was not at liberty to dispose of it for his own benefit or to pledge it as security for his own debt."

In Shaw vs. Spencer, 100 Mass., 382, 389. It was held:

> "That the appropriation of capital stock held in trust, as collateral for the the trustee's own debts, is a transaction so far beyond the ordinary scope of the trustee's authority as to be in itself a suspicious circumstance, and imposes upon the creditor the duty of inquiry. This will hardly be controverted in a case, where stock was held by A. B., *trustee*, for C. D., but the effect of the word "*trustee*" is the same. It means a trust for some one whose name was not disclosed, and there is no greater reason for assuming that a trustee is authorized to pledge, for his own debts, the property of an unnamed *cestui qui trust* than the property of one whose name is known."

III.

THE CIRCUMSTANCES PUT LAFLIN HIMSELF ON INQUIRY.

Leaving out of question the effect of the transfer in blank and the knowledge of Gerault, Laflin's transfer attorney, and the effect of delivering the certificate assigned in blank to Britton, we respectfully insist that complainant is entitled to recover. By the statute of the United States the bank could not purchase or hold Laflin's stock; and the doing so rendered it liable to be closed up—Rev. stat. U. S., Sec. 5201. Laflin being a member of the association could not during the continuance of its banking operations withdraw or permit to be withdrawn in the form of dividends or otherwise any portion of its capital. Rev. stat. U. S. sec. 5143. He is bound by these sections as the organic law of his corporation. To violate these provisions and receive not only five thousand dollars of the bank's money, but be relieved of eight thousand five hundred dollars liability on his stock, and defend the transaction on the plea of ignorance, nullifies every provision of the banking act. Britton's illegal act cannot benefit the stockholder. No *belief* of Laflin can alter the *facts*. Britton in fact give him $5,000 of the bank's money for nothing, and in fact acted for the bank, not himself, and in fact the stock was transferred to the

bank's trustee. The position that Laflin made an "out and out" transfer to Britton cannot be maintained on this record.

Conceding, however, that want of knowledge is a good defense to Laflin, the circumstances surrounding this sale were such as put him on inquiry. The bank had notoriously bought its own stock in the market through Britton. Keleher, Laflin's broker, and Laflin knew this. Laflin was repeatedly advised to sell his stock by commercial friends and his own confidential clerk; by the President of another bank of which Laflin was a director. He sold through a broker at more than forty per cent. discount. His broker dealt with Britton the President of the bank, *at the bank*. Laflin sent his certificate afloat with blank power of transfer. He preferred to remain ignorant as to whom the stock was sold. All of these circumstances, we might say any one of them, were sufficient to put him on inquiry, and if so he is chargeable with all facts snch inquiry would have developed.

Kenny vs. Green, 3 My. & K. 699–719
Gastin vs. Am. Ex. Bk. 29 N. J. E. p. 98.

TRANSACTION VOID UNDER SEC. 5242, U. S. STAT.

Section 5201, Rev. stat. U. S. makes the purchase, or even holding of its own stock when taken for debt beyond six months, a ground for "appointing a receiver to close up the business." This makes such illegal holding equivalent to an act of insolvency. Now at the time Laflin sold, the bank held in its name, 1,900 shares of its own stock illegally purchased by Britton. This was ground for winding it up. The pleadings admit that the bank at the time was wholly insolvent, and that the indebtedness then existing still exists. Of this fact Laflin and Britton both took notice. Concede that Laflin did not; it will not be contended that Britton did not by law know the bank was insolvent—under this state of facts a payment of the banks money to Laflin was made. It violated section 5242 of the Rev. stat U. S., and was null and void. It was a payment in contemplation of insolvency and after an act of insolvency and was made with a view to prevent the application of the assets in the manner prescribed by the national bank act.

In March vs. Eastern R. R. Co., 43 N. H. 515, it was held:

> "To constitute an illegal application of the funds or money of a corporation, it is not necessary there should be any intentional wrong or actual fraud, and to give the court jurisdiction in equtiy, in such case, the plaintiff need not allege fraud or collusion on the part of the company or companies or directors thereof."

In Case Receiver vs. The Citizens Bank of Louisianna, 2 Wood's Reports 23, it was held:

"That the word "insolvency" as used in the 52d Sec. of the Currency Act (R.S.U.S., Sec. 5342), is synonomous with the same word used in the Bankrupt Act. Insolvency as used in the Bankrupt Act, when applied to traders, does not mean an absolute inability of the debtor to pay his debts at some future time upon a settlement and winding up of his affairs, but present inability to pay in the ordinary course of business In other words, that a trader is insolvent when he cannot pay his debts in the ordinary course of his business, as men in trade usually do, and such must be the conclusion even though his inability be not so great as to compel him to stop business. Wage vs. Hall, 16 Wall 599. This definition of insolvency, in my judgment, is the meaning of the word in the Currency Act, It is only necessary that the insolvency should be in the contemplation of the bank making a transfer; the party to whom the transfer is made need not know of, or contemplate the insolvency of the bank which makes the transfer. Thus it was held by Mr. Justice Story, under the Bankrupt Act of 1841, that to constitute a conveyance in contemplation of bankruptcy, it was not necessary that the preferred creditor should know of the debtor's insolvency or should co-operate with him to obtain a priority of payment. Peckham, assignee vs. Burrows, 3 Story 544.

We respectfully submit, that the facts in this case are such that the stockholder must refund to the creditor the trust fund of the bank, of which the shrewdness of the stockholder and the illegality of his chosen mandatary, the Bank's president, enabled him to get possession. Ignorance is no defence. If so, any corporation can be wrecked in ten days by a scheming president. A nod, a wink, a suggestion to the wary stockholders, would drain the coffers of the bank, by the sales of their stock through brokers. and the creditors, when they seek their money would be told, "Recover it from the Bank, it bought all the stock, assumed all the liability of the stockholders, and the stockholders did not know it." Or: "Sue the insolvent agent, the president, he is personally liable for the misuse of the funds of the Bank; but the innocent stockholders, in their childlike simplicity, knew not of his misfeasance though they enjoy the fruits thereof, hence they are safe."

If this is Equity, we mistake its meaning, and do not believe this Court of last resort is willing to impress such doctrines with the seal of its commendation.

HENDERSON & SHIELDS,

Solicitors for Appellant.

APPENDIX---A.

U. S. STATUTES APPLICABLE.

The following sections of the National Bank Act are applicable to this case, and we therefore, for convenience, print them together (see Revised Statutes U. S., pp. 993, 4, 5, 1006, 7, 1213).

§ 5139. The capital stock of each association shall be divided into shares of $100 each, and be deemed personal property, and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies, or security of the existing creditors of the association shall be impaired.

§ 5143. Any association formed under this Title may, by the vote of shareholders owning two-thirds of its capital stock, reduce its capital to any sum not below the amount required by this Title to authorize the formation of associations; but no such reduction shall be allowable which will reduce the capital of the association below the amount required for its outstanding circulation, nor shall any such reduction be made until the amount of the proposed reduction has been reported to the Comptroller of the Currency and his approval thereof obtained.

§ 5151. The shareholders of every National Banking Association shall be held individually responsible, equally and ratably, and not one for the other, for all contracts, debts, and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares; * * *

§ 5152. Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in such trust funds would be, if living and competent to act and hold the stock in his own name.

§ 5201. No association shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale or in default thereof, *a receiver may be appointed to close up the business of the association* according to section 5234.

§ 5204. No association, or *member thereof*, shall, during the time it shall continue its banking operations, *withdraw, or permit to be withdrawn*, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by any such association, equal to or exceeding its undivided profits then on hand, no dividends shall be made; and no dividend shall ever be made by any association, while it continues its banking operations, to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. All debts due to any association, on which interest is past due and unpaid for the period of six months, unless the same are well secured, and in process of collection, shall be considered bad debts within the meaning of this section. But nothing in this section shall prevent the reduction of the capital stock of the association, under section 5143.

§ 5210. The president and cashier of every national banking association shall cause to be kept, at all times, a full and correct list of the names and residences of all the shareholders in the association, and the number of shares held by each in the office where its business is transacted. Such list should be subject to the inspection of all the shareholders and creditors of the association, and the officers authorized to assess taxes under State authority, during business hours of each day in which business may be legally transacted. A copy of such list, on the first Monday in July of each year verified by the oath of such president or cashier, shall be transmitted to the Comptroller of the Currency.

§ 5239. If the directors of any National Banking Association shall knowingly violate, or knowingly permit any of the officers, agents or servants of the association to violate any of the provisions of this Title, *all the rights, privileges, and franchises of the association shall be thereby forfeited.* Such violation shall, however, be determined and adjudged by a proper Circuit, District or Territorial Court of the United States, in a suit brought for that purpose by the Comptroller of Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who partipated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person shall have sustained in consequence of such violation.

§ 5242. All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another except in payment of its circulating notes, shall be utterly null and void; * * * * *

IN THE

Supreme Court of the United States.

CASE NO. 184—OCTOBER TERM, 1880.

WALTER S. JOHNSON, *Receiver of the National Bank of the State of Missouri, Appellant,*

vs.

SYLVESTER H. LAFLIN, *Respondent.*

Appeal from the Eastern District of Missouri.

A. W. SLAYBACK,
Counsel for Respondent.

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RESPONDENT'S STATEMENT OF THE CASE.

The plaintiff filed a bill in equity in the Circuit Court of the United States for the Eastern District of Missouri, at the October Term, 1877, to recover from the defendants the sum of $5,037.50, and to set aside a transfer of eighty-five (85) shares of stock registered in the transfer book of said bank, May 16th, 1877.

The petition alleged that defendant Laflin did, on the 16th day of May. 1877, while defendant James H. Britton was president of said Banking Association, and acting as such, own 85 shares of the capital stock thereof, and that he entered into an arrangement and agreement with said James H. Britton, as trustee of the bank, whereby said Laflin agreed to sell and transfer his 85 shares of stock to said James H. Britton, as trustee of said Banking Association; and that, in pursuance thereof, Laflin delivered to

said Britton, as trustee aforesaid, his certificate of said stock, duly assigned to said Britton as trustee — [it does not allege as trustee of the bank] - on the books of said association. It further avers that said James H. Britton, in said transaction and agreement, without authority of law, assumed to act as the agent of said Banking Association in the purchase of said stock of said defendant Laflin for said bank, and paid to said defendant Laflin, out of the funds of said Banking Association, the sum of $5,037.50 therefor, which said sum said defendant Laflin received from said Britton for the sole consideration of the transfer of said stock by him to said Britton as trustee aforesaid, and for no other consideration whatever. The bill further avers that the bank was insolvent; that the use of the funds by Britton for the purpose stated was misappropriation of the money of the bank, and void as to creditors; and that said stock now stands on the books of said association in the name of James H. Britton, trustee; and the complainant prays that the transfer of stock to Britton, trustee, be declared null and void; and that the defendant Laflin be declared still stockholder in said Banking Association to the extent of 85 shares of stock; and that he be adjudged to refund the said sum with interest from the time he received the same; and that said James H. Britton be ordered and decreed to transfer said stock to the said defendant Laflin on the books of said association.

There is no allegation in the bill that Laflin was knowingly a party to the alleged misappropriation of the fund—*no scienter*.

Britton filed no answer, and made no defense. Laflin filed a separate answer in which he denied having entered into any arrangement or agreement with Britton as trustee of the bank, and avers that, having been owner of eighty-five shares of the stock of said bank, on or about May 15, 1877, said defendant was offered $4,995, or $59.50 per share net by one P. F. Keleher, a broker, and said price was paid him therefor in said Keleher's check upon the banking-house of

Bartholow, Lewis & Co., which check was paid by said banking-house, and that thereupon defendant, Laflin, sold to said Keleher the certificate of said stock, signing a blank power of attorney on the back thereof, as is usual and ordinary in such cases, to have the said shares of stock transferred according to the rules and requirements of said association, and not otherwise, to the purchaser thereof whoever he might be, but not for the purpose of making any wrongful, unlawful or improper disposal of such power. That this defendant had no dealings with James H. Britton, or with James H. Britton as trustee of the bank; that when defendant got his price and surrendered his certificate of stock, he did so in good faith, and got the regular, fair, market price for said stock as it stood in the market at that time, and had no notice that said shares of stock were for the bank, or for James H. Britton as trustee thereof, or that any unauthorized use of the funds of any person or corporation was contemplated; that this defendant had the right to sell his stock, and did sell it in the regular, usual and customary method of making such sales, and without any wrong in himself, or notice of any wrong in others. The plaintiff filed a general replication, and upon issues thus joined the cause proceeded to trial before Dillon, Judge. The evidence showed that Laflin did not know to whom his stock was sold: that Keleher, the broker, called at his office, and made him an offer for the stock, which was accepted by Laflin, Keleher not disclosing, but refusing when asked to disclose, the name of the purchaser; that the purchase price was paid Laflin in a check drawn by Keleher & Co. to Laflin's order, upon the banking-house of Bartholow, Lewis & Co.; that Laflin did not know in what manner Keleher & Co. were reimbursed for the money. The evidence further discloses that Keleher & Co. sold the stock to James H. Britton, taking Britton's individual check on the National Bank of the State of Missouri, which check was paid to Keleher on presentation, and that at the time Keleher did not know or have any reasosable grounds

to suspect that Britton was using any money except what stood properly credited to his private individual account with that bank on that day. The evidence of Curtis, cashier of the bank, shows that Britton individually had to his credit that day at that bank enough money to pay this check, and leave a surplus over [see page 18 of the transcript] of $605.19; that Britton's credit at that time was good; that he had individually dealt largely in the stock of the bank for many years; that on that day he was a man of means, well able to buy the stock if he wanted it; and that such a transaction would awaken no suspicion; that when the bank suspended more than a month later, to wit: June 20th, 1877, Britton still owned 1542 shares individually of the bank stock; that there had been an election of the directors of the bank on the 29th day of May, 1877, at which election the corporation and the then stockholders recognized the right of James H. Britton to the exclusive ownership and control of the eighty-five shares which he had purchased from Keleher, and that he voted said stock at said election. The evidence shows that at the time Laflin made the sale to Keleher, he supposed Keleher was acting for some other purchaser in his capacity as a broker, but did not know it, and Keleher refused to disclose his principal.

It also shows that Keleher did not know for whom Mr. Britton was acting in the purchase, and Keleher swears that he supposed Britton was acting individually for himself, although he does state that, pending the negotiations between him and Britton, Mr. Britton remarked that his party would not pay any more than the offer which he made to Keleher; this offer enabled Keleher to make fifty cents per share over the price which he paid to Laflin, since he paid Laflin $4,995, and received from Britton $5,037.50. The evidence also shows that the price paid for the stock was the market value thereof at that day. It also shows that simultaneously with the payment to Laflin, by Keleher, of the $4,995, or so near as to be one and the same transaction,

Laflin signed the blank power of attorney printed on the back of the certificates of stock as is usual, and handed them to Keleher for the purpose of having the transfer of the shares made upon the books of the bank by the purchaser, in the usual and ordinary manner customary in such transactions. It appears further from the evidence that, at the time Keleher delivered the certificates of stock to Britton, and received Britton's individual check, none of the blanks in the power of attorney had been filled; that sometime thereafter—but exactly when, the testimony does not disclose,—one E. Girault, a book-keeper in the bank, wrote his name into the power of attorney as the attorney to make the transfer, and did make the transfer on the transfer book or register of the share-holders of the bank, making the power of attorney to read as follows:

"E. Girault, attorney in fact to transfer said stock on the books of said bank in such form and manner as may be necessary or required by the regulations of said bank in that behalf in the premises." Upon their face the certificates provided that they were for shares of stock in said bank—"transferable only on the books of said bank in person or by attorney on the return of this certificate, and in conformity with the provisions of the law of Congress, and the by-laws which may be in force at the time of such transfer." The transfer book of the bank shows by its entry that the shares of stock were transferred from S. H. Laflin by his attorney Girault to James H. Britton, trustee, the *cestui que trust* not being disclosed or mentioned anywhere in said transfer. There is a large volume of evidence tending to show much irregularity in the dealings with the bank stock by the president and directors of the bank, extending from the year 1868 up to and even after the last election for directors which took place May 29th 1877. [Transcript of Record, pp. 34, 35, 36, 37 and 38.] But there is no evidence whatever to show that any notice of these irregularities had come to the knowledge of Laflin; that, although Laflin had sold his stock, he continued to de-

posit money with the bank for the Laflin & Rand Powder Company, of which he was resident director at St. Louis, and so late as June the 20th, 1877, the very day the bank closed, he made a deposit of funds in said bank, having no suspicion of its solvency at that time; that his motive in selling his stock did not arise from any suspicion on his part that the bank was insolvent. Keleher testifies that he regarded the bank as sound in all respects at the time he made the sale to Britton; and Laflin testifies that he did not know, until after the bank had been closed, that the name of Girault had been inserted in the power of attorney which was endorsed on the certificates. There is no evidence tending to show that Laflin ever authorized a sale of the stock to the bank, or to any one as trustee for the bank; and there is no evidence to show that he ever adopted or ratified that part of the transaction which involved the gist of the complaint, namely, the misapplication of the funds of the bank by placing them to the individual credit of James H. Britton; and that this malfeasance of the bank officers, if done at all, was entirely without his knowledge or consent. And he claims that that part of the transaction was outside of the power of attorney executed by him, which merely contemplated the lawful transfer to a *bona fide* purchaser.

The evidence shows that the only money account with the bank by James H. Britton, trustee, appears from the entries in the books to have been for Joseph Brown. It nowhere appears that Mr. Britton had any money account with the bank, as trustee for the bank; but it does appear that he had at all times kept a large individual account as a depositor. The complainant claims that Laflin is bound by whatever knowledge Girault may have had of the internal management of Britton's individual account as a depositor. And it is also claimed that, whether he knew it or not, the fund, being a trust fund of the creditors which Britton misapplied, can be followed to Keleher who first got it; to Bartholow, Lewis & Co., who secondly got it; to Laflin,

who thirdly got it; or to any solvent person into whose hands it can be traced. These positions the defendant Laflin controverts. He claims that Britton's individual account is, by no evidence in the record and by no construction of law, a trust fund for creditors and should not be confused with the rules which apply to stock. Secondly, that, if the receiver is merely looking for the first solvent recipient of such trust fund, Keleher & Co. stand first; that Bartholow, Lewis & Co., stand second; that these parties are both solvent, and the receiver has no right to overlook recourse to them, in order to force Laflin into litigation with those parties, in order to maintain his claims and rights arising from his dealings with them. If his only wrong be that he got money, the equivalent of which once stood to the credit of J. H. Britton individually, as a depositor, and that he did so innocently, then the receiver should look first to Keleher & Co., then to Bartholow, Lewis & Co., and must exhaust his remedy against them, before he can have any right in equity of recourse against Laflin.

The trial court, having fully heard and considered the case, found in favor of the defendants and ordered that the bill be dismissed—absolutely as to Laflin, and that, as to Britton, it should be dismissed without prejudice. Thereupon the complainant appealed to this court.

RESPONDENT'S BRIEF.

At the argument of the case in the court below the complainants conceded that, upon all the evidence adduced, there was no testimony whatever of any actual or intentional fraud on the part of Laflin, and the claim to a recovery against him was based entirely on the idea that Laflin was chargeable with constructive fraud in this particular, to wit: that he had executed a blank power of attorney at the time he sold the stock to Keleher & Co., and although he did not know in point of fact when the name of Girault was inserted, that he is still answerable to the receiver of this bank, if Girault, the book-keeper of the bank, was aware at

the time he filled the blank power of attorney, at Britton's request, with his own name, that a sale to James H. Britton, trustee, signified a misapplication of the monies of the bank. It was conceded that Laflin had no notice whatever of any such misapplication of funds, and Judge Dillon found as a fact that Laflin acted in entire good faith. The question raised for review was whether Laflin could be held to be a stockholder after the 16th day of May, 1877, the date at which he sold his stock to the brokers, Keleher & Co., receiving their check on the banking-house of Bartholow, Lewis & Co., signing his name to the blank power of attorney, printed as is usual upon the back of the certificates of stock for the purpose of enabling the purchaser to have the transfer made upon the transfer-book of the bank. During the taking of the testimony, some insinuations were attempted to be thrown out to the effect that Mr. Laflin had lost faith in the bank, and had disposed of his stock without caring who was the purchaser; but this savage position was abandoned when the testimony was all in, and the controversy settled down to a discussion as to how far Mr. Laflin could be held answerable for the acts and doings, and guilty knowledge of wrongful acts on the part of Britton and Curtis, the president and cashier of the bank, upon the part of Girault, who filled his name in the blank power of attorney on the back of the certificates at the individual request of James H. Britton, without any knowledge thereof on the part of Laflin, except this—that he had signed and delivered to Keleher & Co. the certificates of stock in the bank, leaving the name of the attorney in fact to be filled into the blank in such way as might be directed by the purchaser.

The complainant contended that this act alone made Laflin responsible for whatever might be done in his name under the blank power of attorney so printed on the certificates; while, on the part of Mr. Laflin, it was contended that he could only be held, in the absence of any actual fraud, responsible for the acts of any possible attorney whose name might be inserted in the power so far, and as

the power thus created was lawfully exercised by any such attorney in fact, and no further. It becomes necessary, therefore, to examine first, the limitations which appear upon the face of the written instrument itself, in order to determine the extent of the power conferred by Laflin upon such attorney in fact. The certificate provides on its face as follows: "Transferable only on the books of the said bank in person or by attorney on the return of this certificate, and in conformity with the provision of the law of Congress and the by-laws which may be in force at the time of such transfer."

The power of attorney printed on the back of said certificates is simply as follows: "I ———, do, etc., etc., constitute and appoint ——— ———, attorney in fact to transfer the said stock on the books of said bank in such form and manner as may be necessary or required by the regulations of said bank in that behalf in the premises."

We assume, therefore, that whatever power or authority may have been derived by Girault from Laflin, it came from this written power of attorney; that this must be strictly pursued, and cannot be extended by implication. It is clear that if this power had been strictly pursued, the attorney acting under it was only authorized to make a transfer to some person capable of becoming a purchaser. J. H. Britton, trustee, was such a person May the 16th, 1877, when the entry was made in the transfer book of the bank to that effect. There the power was ended. It stood executed. What J. H. Britton, trustee, afterwards did with this stock, or might have done with it—what transfers he might make of it—would involve other and distinct transactions to which Laflin was no party, he having ceased to be a stockholder, or to exercise any control over the stock from and after the time when the officers of the bank caused the entry to be made upon the stock register or transfer book of the bank, showing that this stock had become the property of James H. Britton, trustee. For whom he was trustee, did not appear by the entry made, and

we are therefore relieved from inquiring what might have been the consequences to Laflin, if it had appeared from this entry that the purchaser was James H. Britton, trustee, for the bank. The officers, directors and stockholders of the bank, at the meeting held shortly afterwards, on May the 29th, 1877, recognized Mr. Britton as the true owner of the stock, and he voted it, without objection, at that election, as he did all the other stock which stood in his name. Any question of misapplication of funds which might arise between Britton and the bank, or its creditors, or its receiver, could not arise as to Laflin who merely sold, at the regular market price, to a person in good credit, from whom he received his pay innocently, and to whom the stock certificates, and the power of attorney to make transfer thereof were delivered in the usual, ordinary course of trade and business, and with no feature in the transaction which implied the requirement of that extraordinary diligenee which the complainant would now exact of him. Laflin had no reason to suppose that any possible attorney in fact would transcend his naked power. That power stood limited upon its very face to make a transfer, on the transfer book of the bank, to some person capable of becoming a lawful purchaser. The power so limited was exhausted May the 16th, 1877, by the transfer there recorded to James H. Britton, trustee; and as that record was sufficient, Laflin was not bound by anything that occurred afterwards, unless some fraud or actual notice be brought home to him, and this is not done. At that day the credit and standing of James H. Britton was beyond suspicion. Neither Keleher, nor Girault, nor Laflin himself, if he had known that it was bought by James H Britton, trustee, could have felt impelled to make any further inquiry as to the trust asserted by Britton. His word was good, and there was nothing on the books of the bank to show that at any meeting of its directors or managers he had ever been constituted trustee for the bank in the purchase of stock for the bank; and it is very obvious that any such record upon the minutes of the

bank would have affected all the other directors and officers of the bank with notice. The assuming to act in that way by Britton was his own personal act outside of any agency for the bank. For this he was accountable personally, but no one else except those who knowingly connived at it, and it was not to be presumed by Laflin, or anyone else, that he would do a wrong. Neither had Laflin any right to presume that Keleher, or any other person to whom Keleher might sell the stock, would do a wrong. Neither had he the right to presume that any person, attempting to exercise authority under the power of attorney printed upon the back of the certificates and signed by him in blank, would transcend the power therein expressly specified. The transfer book shows that 85 shares were transferred to James H. Britton, trustee, May the 16th, 1877; this is signed "S. H. Laflin per Girault, attorney." That transfer must speak for itself, stand just as it is, and stop, so far as Laflin is concerned, just where it is. [See transcript of record, page 8.]

This was notice to all the world that James H. Britton, trustee, was the holder of those shares; that Laflin had ceased to be a stockholder; and the fact that Britton afterwards voted them, shows he exercised a shareholder's rights and privileges over them.

"A contract for the sale of stock becomes executed by the delivery to the purchaser of the certificates of the shares, with the power of attorney to transfer them on the books of the corporation. Such delivery is analogous to the delivery of chattels, and renders the transfer complete."

U. S. vs. Vaughn, 3 Binney, 394.
Howe vs. Starkweather, 17 Mass., 240.
Noyes vs. Spalding, 29 Vt., 420.

"The holder's writing his name and affixing his seal on a certificate of stock, and delivering it with intent to be filled up by one who should purchase the stock, is a valid transfer of the stock."

1 Arnst. 229.

4 Johns. 54.
6 Cowen, 60.
8 Cowen, 118.
13 Wend. 587.
Broadway Bank v. McElrath, 2 Beasley (N. J.) 24.
Huntington County v. Nassau Bank, 2 Green. 496.

"A corporation is bound to exercise, in respect to permitting issue and transfer of its stock, such ordinary care and skill as affords to dealers a safe and reliable mode of acquiring title to its shares; and this obligation exists not only to existing shareholders, but to the public generally, and all who enter upon dealings in their stock. If their transfer agent is guilty of frauds in the issue of stock, which by ordinary care and diligence might have been detected, the corporation is liable to a party injured for his damages. Such a case does not present the question which of two innocent parties must suffer. The question is between an innocent and a culpable party."

N. Y. etc. R. R. v. Schuyler, 34 N. Y. 30.
38 Barb. 534–464.

These cases discuss the general principles governing the transfer of stock.

"The right of alienation is an incident of property, and a by-law of a bank, prohibiting the alienation of stock therein or putting restrictions thereon, is void as being in restraint of trade."

Moore v. Bank of Commerce, 54 Mo. 377.

In the case of Black *et al.* v. Zacharie *et al.*, 3 Howard, 513, the Supreme Court of the United States held: "Where the owner of the property has lost all power over it, and can not change its destination, the creditors can not attach. In the case of the Union Bank of Georgetown v. Laird, 2 Wheat. 390, this court took notice of the distinction between the legal and equitable title in cases of bank stock where the charter of the bank had provided for the mode of transfer.

The general construction which has been put upon the charters of other banks containing similar provisions as to the transfer of their stock, is, that the provisions are designed solely for the safety and security of the bank itself, and of purchasers without notice; and that as between vendor and vendee a transfer, not in conformity to such provisions, is good to pass the equitable title and divest the vendor of all interest in the stock. Such are the decisions in the cases of Bank of Utica v. Smalley, 2 Cowen, 777; Gilbert v. Manchester Iron Co., 11 Wend. 628; Commercial Bank of Buffalo v. Kortright, 22 Wend. 362; Quiner v. The Marblehead Ins Co., 10 Mass. 476; Sergeant v. Franklin Ins. Co., 8 Pick. 490."

"A contract for the sale of stock becomes executed by a delivery to the purchaser of the certificates of the shares, such delivery being analogous to the delivery of chattels, and so rendering the transfer complete."

Ang. & Ames on Corp., sec. 564.

"The purchaser or other person entitled in such a case has only to make his right known to the corporation that it may be entered upon the books, and this is all that can be required."

Ang. & Ames on Corp., sec. 567.
8 Pick. 90.
2 Kyd. 122.
10 Mass. 476.

"Although the party taking a conveyance of shares is entitled to membership, yet at an election, as for directors, his right to vote must be determined by the transfer-book of the company, the inspectors not being authorized to look beyond it."

Ang. & Ames on Corp., sec. 113, citing:
Long Island Railroad, etc., 19 Wend. 37.
Ex parte Holmes, 5 Cowan, 426, etc.
Perpetual Ins. Co. v. Goodfellow, 9 Mo. 149.

Union Bank of Georgetown v. Laird, 2 Wheat. 390.
Brent v. Bank of Washington, 10 Pet. 596.
Mechanics' Bank v. Merchants' Bank, 45 Mo. 514.
Moore v. Bank of Commerce, 52 Mo. 377.

It is clear that the receiver of the bank can not have any better right than the attaching creditors would have.

After May the 16th, 1877, Laflin lost all control over the destination of the property. Britton was treated by the bank as the holder after that. He voted the eighty-five shares May the 29th. On the day previous, May the 28th, he sold some shares at 60 cents, and was allowed by the bank to transfer them on the transfer-book of the bank. When Laflin sold his stock May the 16th, its market price was 58 1-5 to 59 1-2. It stood at 60 May the 28th and 31st, as the evidence shows. Was it not Laflin's right to sell at the market price? If the receiver would seek equity, he must do equity. The bill does not aver, and the evidence does not show any offer or even any power of the complainant to put Laflin in *statu quo* or to make him whole. On May the 16th he certainly had the right of alienation incident to this property, and he had a right to sell it on the market at its market value. And it will not be placing him where he stood, unless he be allowed the market value at that day. By what authority can the receiver of the bank step in and claim that the transfer-book, the register of the corporation he represents, gave no notice? The Supreme Court of the United States (3 How. 513), by approving 2 Cowen, 778, has expressly decided that the transfer on the register divested Laflin of all interest in the stock, and that the equitable title passed when he delivered over the certificates of his stock to a purchaser; and that, when the transfer-book showed the registry of transfer, the change of ownership was complete. If provisions are made for the transfer of shares, and these are complied with or waived by the corporation at request of the assignee, his (the transferee's) liability to calls as a stockholder is complete.

Haddesfield Can Co. v. Buckley, T. T. R. 36.

"It would be ridiculous," says Lord Kenyon, Ch. J., "to determine that a person, after he has sold his shares in respect to which only he became proprietor, should still continue to be a proprietor." Ib.

"Acts of Parliament in England, establishing joint-stock companies, generally give not only a power to declare shares forfeited where calls are not paid, but also to bring an action for the amount of the calls. The latter course of proceedings can, however, only be taken whilst the party remains a shareholder,—and if he assigns the shares before the call is made, he is not liable to be sued for it."

Woodsworth on Joint-Stock Companies, 321.

As to who ought to be considered stockholders and contributories, and who ought not, under the British "Winding-up Acts," see for a most exhaustive and satisfactory case, Nicol's Case, 3 DeGex & Jones (Eq. R.) 387.

Gady's Case, 1 DeGex, J. & S. 448, is also interesting.

Mr. Thompson, in his treatise on Liability of Stockholders, § 239, *et seq.*, enters upon an argument against the doctrine of these cases. The author certainly did not apprehend the facts of this case, as found by the court, and abundantly borne out in this record. The distinctions he tries to draw are not applicable to the facts of the case at bar.

If a shareholder has sold *bona fide*, and the sale has been recorded upon the transfer book of the corporation, there is no such thing as "constructive fraud," but there must be shown actual notice to the shareholder, in order to make him a participator in the misapplication of funds by a corporate officer.

Bigelow on Fraud, § 317.
Bargate *et al.* v. Shortridge, 5 H. L. Cas. 297.
Nixon v. Green, 11 Exch. 550.
Austin v. Daniels, 4 Denio, 299.
McCullock v. Moss, 5 Ib. 567.
Boyd v. Appleton, 8 Mass. 472.
Child v. Coffin, 17 Ib. 64.

Coffin v. Collins, 17 Me. 442.
Merrill v. Walker, 24 Ib. 237.
Hoagland v. Bell, 36 Barb. 56.
Manning v. Curry, 2 Ib. 294.
Middleton Bank v. Magill, 5 Conn. 28.

"The transfer books of the corporation are conclusive, so far as the creditors of the corporation are concerned, as to who are to be considered stockholders."

Stanley v. Stanley, 26 Me. 191.

"It was certainly contemplated that those members should be liable, who were such at the time the default was made by the principal body. There is nothing unfair or unreasonable in this. It was not intended that a man who had purchased a share in a company should continue to be bound, after it should pass beyond his control into the management of others."

McClaren v. Franciscus, 43 Mo. 465.

In Turnbull v. Payson, 5 Otto, 421, this court held: "Where the name of an individual appears in the stock-book of a corporation as stockholder, the *prima facie* presumption is that he is the owner of the stock." In Mann v. Cook, 20 Conn. 178, it was held: "The registry book of shareholders is *prima facie* evidence against those whose names appear upon it."

The issuing of a new certificate to Britton was immaterial.

Field on Corp., §§ 110, 113.
Comins v. Coe, 117 Mass. 45-48.

The vendee of shares in a bank can enforce the issue of a certificate to him.

Hill v. The Pine River Bank, 45 N. H. 390.
Moses on Mandamus, 181.

The sale of the shares was a completed transaction so far as Laflin was concerned when he took the checks from Keleher & Co., and surrendered the certificates. The equitable title was then transferred. The legal title was completely vested in Britton as soon as the transfer book showed

record of the transfer. Although neither in form or character negotiable paper, such stocks approximate to it as near as practicable.

Bank v. Lanier, 11 Wall. 377.

Bank of Newark v. Bank, etc., 13 Am. L. Reg. (N. S.) 249.

Such record gave notice to the world, and divested Laflin of the legal and equitable title to the stock; from that day, he could not reclaim it; his dominion over it ceased.

As to Girault, whatever power he had from Laflin, was exhausted hy inserting the namə of the vendee in the blank. The power gave him no authority to transfer the stock in any manner not contemplated by his constituent.

Denny v. Lyon, 38 Pa. St. 98.

The power of attorney limited his agency to make such transfer, in accordance with the law creating and regulating the bank, as to such transfers. The registry can be made as well by the purchaser as by the vendor.

Bank of Utica v. Smalley, 2, Cow. 778.

It appears from the evidence that Girault, the bookkeeper of the bank was usually its agent for making these transfers. If his act was unauthorized to bind the bank or its creditors, then it could not create a liability against Laflin, for it was beyond the scope of his authority from Laflin. Laflin gave authority for any attorney to transfer "in conformity to the rules &c." If Girault went beyond these plain instructions, he acted upon his individual accountability. Girault testifies as to that part of it, he only did that which Britton, the President, and Curtis, the Cashier, directed him to do. Then, he was in the service of masters whom he could not serve whilst in Laflin's service, and whose attitude is antagonistic to Laflin, for it is to their interest to shift the responsibility of their misfeasance upon innocent and unsuspecting shoulders.

The action of the bank, in suffering Britton to misapply the funds of the bank, in order to reimburse his individual account, out of which he had paid for this stock, cannot be

chargeable to Laflin. The officers of the bank can not be permitted to say: "We have done wrong; punish Laflin for it." There would be no equity in this. Even the creditor cannot make the shareholder liable for such acts, unless he was actually privy thereto.

Bargate *et al.* v. Shortridge, 5 H. Lds. Cas. 296.

In the case of Turnbull v. Payson, 5 Ottto. 421, opinion delivered by Mr. Justice Clifford, it is held:

"Where the name of an individual appears on the stock-book of a corporation as a stockholder, the *prima facie* presumption is that he is the owner of the stock, in a case where there is nothing to rebut that presumption; and in an action against him as a stockholder, the burden of proving that he is not a stockholder, or of rebutting that presumption, is cast upon the defendant.

Hoagland v. Bell, 36 Barb. (N. Y.) 57.
Plank Road v. Rice, Ib. 162.
Turnpike Road v. Van Ness, 2 Cranch C. C. 451.
Mudgett v. Horrell, 33 Cal. 25.
Coffin v. Collins, 17 Me. 440.
Merrill v. Walker, 24 Id. 237."

In the case of Mt. Vernon Bank v. Stone, 2 R. I. Rep. 129, it is held:

"Where a bill makes charges of fraud which are not established at the hearing, the bill will be dismissed, notwithstanding it states other grounds upon which relief might have been granted, if not blended with the allegations of fraud."

The principle here announced is well worthy the consideration of courts. Wholesale allegations of fraud may amuse the plaintiff, but the defendant has a reputation at stake, which often is, and ought always to be, of more consequence than the mere matter of dollars and cents.

The plaintiff enjoys immunity in making such charges, and can claim, if called to account, that his petition is not

libelous because it is privileged. Meantime these charges remain of record, and will remain there, to blast the good fame of the defendant while living, and stain his memory after he is dead.

The trial court has found as a fact, that there was no such fraudulent arrangement between Britton and Laflin as this petition charges. There is a fatal difference between the allegations of the bill, and the evidence offered to support them. It is well settled, that in such cases the *allegata* must be strictly sustained by the *probata*.

There is no equity in the case, and the bill was most righteously dismissed by the revered jurist before whom the cause was tried.

"A court of equity is always reluctant to rescind, unless the parties can be put back in *statu quo*. If this cannot be done, it will give such relief only where the clearest and strongest equity imperatively demands it."

Grymes v. Sanders, 3 Otto, 55.

But what equity is there that this defendant Laflin should now be called upon, when he cannot be put in *statu quo*? He might have disposed of his stock. He has been injured by this transaction. What right has the company or its assignee to say that the bank or its creditors can reap an advantage over Laflin, because the then recognized officers and agents of the bank clandestinely purchased his stock, paid out their individual money for it, and then unlawfully turned round and reimbursed themselves by appropriating money of the bank? Why should they look beyond the derelict, in order to establish a supposed liability against the innocent?

If Laflin had gone to the bank himself, and had seen and signed the entry on the transfer book, the question might arise whether he was bound to inquire who was the *cestui que trust* of "J. H. BRITTON, TRUSTEE?" But if he had done so, it is not to be presumed he would have found out. The bill alleges that Britton was trustee for the bank. But

the proof shows he held no such trust. That in fact, as in law, he was not and could not have been trustee for the bank in the purchase of this stock. He is, therefore, to be considered as *prima facie* trustee for some other person or persons. If he saw fit to purchase this stock, even if he did so with the motive of voting it at the election for directors then rapidly approaching, it was his right to purchase it, for himself and those interested with him in its control; and so long as Laflin did not know and had no reasonable ground of suspicion as to the use to which Britton might intend to put it, Laflin had no right to accuse Britton of a wrong. He had no right to presume that Britton contemplated a wrong, or that he would raise the money to pay for it, by borrowing the same from the bank without security, or contrary to the rules governing the use of the money of the bank. Britton's credit and standing were as high as that of any bank president in the Western country. It was his privilege to buy the stock, and it was his right to make a transfer of it on the transfer book of the bank. It was his duty as vendee to have such transfer made, "so as to relieve the vendor from liability to future calls." A court of equity will compel a transferee of stock to record the transfer, and to pay all calls after the transfer.

Webster v. Upton, Assignee, 1 Otto, 71, 72.

"A party dealing with an executor is not bound to inquire into his object. Nor is such a dealer at all liable for an executor's misapplication of moneys, unless he has reasonable ground for believing that the latter intended to misapply the money."

Albert v. Savings Bank, 2 Md. 159.

The same rule would undoubtedly apply to a trustee.

As to how far persons dealing with trust property are held bound to see to the due application of the purchase money—a case analogous to the present inquiry, see

Story's Eq. Jur., §§ 1134, 1135.

The undertaking to make a test case of this, furnishes no argument at all.

Ex parte Bagge, 4 Eng. L. & Eq. R. 72.

"Fraud will not be presumed where all the facts consist as well with honesty and fair dealing, as they do with an intention to defraud."

Picot v. Bates, 47 Mo. 392.
Rumbolds v. Parr, 51 Mo. 592.
Dallam v. Renshaw, 26 Mo. 533.
Kerr on Fraud & Mistake, 384.
Ames v. Gillmore, 59 Mo. 537.
Henderson v. Henderson. 55 Mo. 533.
Kitchen v. Cape Girardeau, 59 Mo. 514.

"When a contract can be performed without any violation of law, it is the legal presumption that it will be so performed, or at least there is no presumption that it will not be so performed."

Sheffield v. Balmer, 52 Mo. 474.

"The rule is universal that, in order to bind the principal upon a contract made by an agent, the contract must be within the authority committed to the agent, and that the authority must be strictly followed. If the agent's acts vary substantially from his authority in nature, or extent, or degree, they are void as to the principal and do not bind him'.'

State v. The Bank of State of Mo., 45 Mo. 538.

"The agent, and not the principal, is responsible to third party for positive malfeasance."

Buis v. Cook, 60 Mo. 391.

"The act of the agent must be within the scope of the authority committed to the agent."

Story on Agency, sec. 165.

"It is good for what it is warranted, and void for the rest."

Story on Agency, §§ 166, 199.

"The general principle which pervades all such cases is the same:—That the principal is not bound by the unauthor-

ized acts of his agents, but is bound where the authority is pursued."

Story on Agency, §§ 170, 172, 176, 192, 195, 197.

"The authority cannot be extended beyond that which is given by the terms of the instrument, and must be limited to acts which were within the scope of the particular business to which they relate."

Mechanic's Bank v. Schaumburg, 38 Mo. 236.

"The knowledge, acquired by the officers of a corporation while in the discharge of their official duties, is the knowledge of the corporation itself." Ibid, 228.

"What an agent does in excess of his particular authority is not binding on the principal."

Paley on Agency, 178.

"But to the extent of his agency, it is binding for him and against him." Ibid.

"Powers of attorney to transfer stock are almost invariably in blank. The only question in such cases is whether the blanks have been so filled up as to carry out the intention of the constituent."

German Building Assn. v. Gendmeyer, 50 Pa. St. 74.

"All parties through whose hands it may pass cannot bind the constituent by an alteration of that intention or by any positive malfeasance."

Master v. Miller, 1 Arnstruther R. 230.

In the case of Weisser v. Denison, 6 Selden, 69–77 — a case on all fours is this, and a very satisfactory case—it is held "A principal is bound by the act of his agent only so far as the agent is acting in the course of his employment."

"Where an attorney in fact undertakes to exercise undue authority transcending the limitations contained in his power, persons dealing with him and having notice of the extent of his authority, can not hold that the principal is bound by such acts."

Story, Eq. Juris. §§ 222, 311, 523.

Foster v. Essex, B. R., 17 Mass. 478.

The question is not merely what did Girault know, but

what power did he have? The corporation permitted the transfer to be made. If Girault had known when the bank permitted the blanks to be filled up, that its officers were engaged in violation of law under the Acts of Congress concerning National Banking Associations, said guilty knowledge might have made him individually liable, but Laflin could not be affected by his criminal or unauthorized acts. He could only bind his constituent to the extent of his written power, which expressly provided that he might transfer said stock on the books of said bank, 'in such form and manner as may be necessary or required by the regulations of said bank, and in conformity with the provisions of the laws of Congress, and the by-laws which may be in force at the time of said transfer.'

Girault testifies that he knew of no wrong in the transaction; that even the teller of the bank could not know. All that he knew was that the money which went from the bank to the credit of James H. Britton, went to his individual account, not to his account as trustee. If it was a clear conversion of the money of the bank, and Girault, the book-keeper of the bank, so understood it, it was a crime on his part for which Laflin is not liable; and if Girault did not so understand it, then again Laflin is not liable, for it was in such case the act exclusively of Britton individually, and for which he only is liable. To make Laflin a party to it, he must be affected with notice, and then he would be chargeable with actual fraud, which is not claimed.

"The mere addition of the word 'trustee' after the name of the person to whom stock is transferred, is not sufficient to put persons dealing with the trustee upon inquiry as to the trustee's title, nor will it operate as a constructive notice of the owner's equitable right."

Brewster v. Sime *et al.*, 42 Cal. R. 139.

Bayard v. Farmers', etc. Bank, 52 Pa. St. R. 337.

Albert *et al.* v. City of Baltimore, 2 Md. 159.

Stockdale v. The South Sea Co., Barnardiston, 363.

Ryder v. Alton R. Co., 13 Ill. 516.

How could Keleher, or Girault, or even Laflin himself know whether Britton was buying for himself or for a pool representing himself and others, or for some parties aspiring to be directors at the election about to take place, and at which it is proved he did in point of fact cast a vote of every share held by him as trustee and as an individual on the transfer-book. [Page 35 transcript of record.]

Here the case it appeared should rest. The receiver, so far as he represents the bank, has no greater right to recover against Laflin than the bank itself would have if it were a going concern. So far as he represents creditors of the bank, they can not look to Laflin as a contributory, for Laflin ceased to be a stockholder on May 16th, 1877, and the transfer-book gave notice of this to all the world, including creditors. And they can not look to him unless they charge him with actual fraud, and support the charge by affirmative testimony. The eminent judge who tried this case found as a fact that Laflin acted in good faith throughout the entire transaction, and decided as a conclusion of law that a shareholder in a national bank, while it is a going concern, has the absolute right in the absence of fraud to make a *bona fide* and actual sale and transfer of his shares at any time to any person capable in law of purchasing and holding the same, and of assuming the transferrer's liabilities in respect thereto, and that this right is not in such cases subject to the control of the directors or other stockholders. And the learned court further found as a fact that on May the 16th, 1877, the date of the sale by Laflin, James H. Britton, or James H. Britton, trustee, was such a person. As the facts so found by the court are amply sustained by the record, the palpable justice of the conclusions reached seems so conclusive, and is so demonstrated in the masterly language of the finding itself, that further comment by counsel would appear audacious.

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